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PARTS 200 TO 499
Revised as of October 1, 1990

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PARTS 200 TO 499

Revised as of October 1, 1990

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OF GENERAL APPLICABILITY
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AS OF OCTOBER 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, 46 CFR 201.1 *refers to title 46, part 201, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 46—SHIPPING is composed of nine volumes. The parts in these volumes are arranged in the following order: Parts 1-40, 41-69, 70-89, 90-139, 140-155, 156-165, 166-199, 200-499 and 500-End. The first seven volumes containing Parts 1-199 comprise Chapter I—Coast Guard, Department of Transportation. The eighth volume containing Parts 200 to 499 includes Chapter II—Maritime Administration, Department of Transportation and Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation. The ninth volume containing Part 500-End includes Chapter IV—Federal Maritime Commission. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

Subject indexes for Chapter I—Coast Guard appear for Subchapter B—Merchant Marine Officers and Seamen, Subchapter C—Uninspected Vessels, and Subchapter D—Tank Vessels following the subchapters in Parts 1-40; for Subchapter F—Marine Engineering following the subchapter in Parts 41-69; for Subchapter H—Passenger Vessels following the subchapter in Parts 70-89; for Subchapter I—Cargo and Miscellaneous Vessels, Subchapter I-A-Mobile Offshore Drilling Units, and Subchapter J—Electrical Engineering following the subchapters in Parts 90-139; for Subchapter S—Subdivision and Stability and for Subchapter T—Small Passenger Vessels (Under 100 Gross Tons) following the subchapters in Parts 166-199.

Redesignation tables for Chapter I—Coast Guard appear in the Finding Aids section of the volumes containing Parts 1-40, Parts 41-69, Parts 70-89, Parts 90-139, Parts 140-155, Parts 156-165, and Parts 166-199. A redesignation table for Chapter II—Maritime Administration appears in the Finding Aids section of the volume containing Parts 200-499. A redesignation table for Chapter IV—Federal Maritime Commission appears in the Finding Aids section of the volume containing Part 500-End.

For this volume, Linda Landis Jones was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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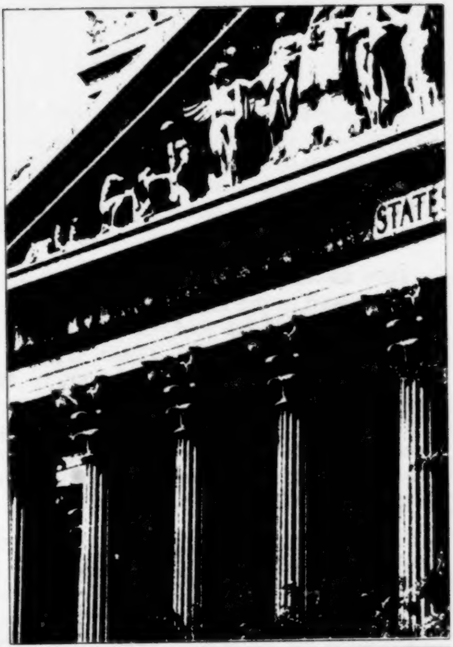

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Coast Guard, Department of Transportation: See Navigation and Navigable Waters, 33 CFR Chapter I; Federal Acquisition Regulations System, 48 CFR, Chapter 12; Shipping, 46 CFR, Chapter I.

Foreign-Trade Zones Board: See Commerce and Foreign Trade, 15 CFR Chapter IV.

Interstate Commerce Commission: See Transportation, 49 CFR Chapter X.

Panama Canal Regulations: See Panama Canal, 35 CFR Chapter I.

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EDITORIAL NOTE: Nomenclature changes affecting Chapter II appear at 46 FR 47458 and 47460, Sept 28, 1981.

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AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Reorganization Plan No. 7 of 1961, 26 FR 7315; Department of Commerce Order No. 117 (Rev.).

Source: General Order 41, 3d Rev., 29 FR 14475, Oct. 22, 1964; 29 FR 15374, Nov. 17, 1964, unless otherwise noted.

Subpart A—General Information (Rule 1)

§ 201.1 Scope of rules.

The regulations in this part govern practice and procedure before the Maritime Administration and Maritime Subsidy Board (as described in 49 CFR 1.66 and 1.67), hereinafter referred to collectively as the "Administration," under the Merchant Marine Act, 1920, as amended, Merchant Marine Act, 1936, as amended, Merchant Ship Sales Act, 1946, Administrative Procedure Act, and related Acts. In addition, certain proceedings under sections 605(c) and 805(a) of the Merchant Marine Act, 1936, as amended, shall be conducted in accordance with part 203 of this chapter except as may be provided otherwise by the Administration.

[55 FR 12358, Apr. 3, 1990]

§ 201.2 Mailing address; hours.

Documents required to be filed in, and correspondence relating to, proceedings governed by the regulations in this part should be addressed to "Secretary, Maritime Administration, Department of Transportation, Washington, DC 20590." The Office of the Secretary, Maritime Administration, including the public document reading room, located in room 7300, 400 Seventh Street, SW., Washington, DC 20590, is open from 8:30 a.m. to 5:00 p.m.

[55 FR 12358, Apr. 3, 1990]

§ 201.3 Authentication of rules, orders, determinations and decisions of the Administration.

All rules, orders, determinations or decisions issued in any proceeding covered by the regulations in this part shall, unless otherwise specifically provided by the Administration, be signed and authenticated by seal by the Secretary of the Administration in the name of the Administration.

§ 201.4 Inspection of records.

(a) The files and records of the Administration shall be opened for public inspection as provided in §§ 380.32, 380.33, and 380.34 of this chapter.

(b) In addition, access to initial, recommended, and tentative opinions and orders may be obtained pursuant to paragraph (a) of this section and copies of these documents secured in accordance with § 201.186.

[G.O. 41, 3d Rev., Amdt. 4, 37 FR 15306, July 29, 1972]

§ 201.5 Searching, copying, and certification of records; fees therefor.

Fees for services with respect to documents subject to inspection as provided in § 201.4 shall be the same as those set forth in § 380.35 of this chapter.

[G.O. 41, 3d Rev., Amdt. 4, 37 FR 15306, July 29, 1972]

§ 201.6 Documents in foreign languages.

Every document, exhibit, or other paper written in a language other than English and filed with the Administration or offered in evidence in any proceeding before the Administration under the regulations in this part or in response to any rule or order of the Administration pursuant to the regulations in this part, shall be filed or offered in the language in which it is written and shall be accompanied by an English translation thereof duly subscribed.

§ 201.7 Information; special instructions.

Information as to procedure under the regulations in this part, and instructions supplementing the regulations in this part in special instances, will be furnished upon application to the Secretary of the Administration.

§ 201.8 Use of gender and number.

Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender may be applied to females.

§ 201.9 Suspension, amendment, etc., of rules.

The regulations in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the FEDERAL REGISTER. Also, any regulation in this part may be waived by the Administration or the Presiding Officer to prevent undue hardship in any particular case.

Subpart B—Appearance and Practice Before the Administration (Rule 2)

§ 201.15 Appearance in person or by representative.

A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the regulations in this part. A party may offer testimony, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted. Any person compelled to appear in a proceeding pursuant to subpoena may be accompanied, represented, and advised by counsel and may purchase a transcript of his testimony.

§ 201.16 Authority for representation.

Any individual acting in a representative capacity in any proceeding before the Administration may be required by the Administration or the Presiding Officer to show his authority to act in such capacity.

§ 201.17 Written appearance.

Persons who appear at any hearing shall deliver a written notation of appearance to the reporter, stating for whom the appearance is made. The written appearance shall be made a part of the record.

§ 201.18 Practice before the Administration defined.

Practice before the Administration shall be deemed to comprehend all matters connected with any presentation to the Administration or its staff.

§ 201.19 Presiding officers.

Hearings on any matter before the Administration will be held by a duly designated Member or Members thereof, or a Hearing Examiner qualified under section 11 of the Administrative Procedure Act, assigned by the Chief Hearing Examiner, who shall be designated as the Presiding Officers. Where appropriate the Administration may designate other members of the staff to serve as Presiding Officers in hearings not required by statute, as provided in § 201.86.

§ 201.20 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or territory of the United States may practice before the Administration. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof.

§ 201.21 Persons not attorneys at law.

Any person who is not an attorney at law may be admitted to practice before the Administration if he is a citizen of the United States and files proof to the satisfaction of the Administration that he possesses the necessary legal, technical, or other qualifications to enable him to render valuable service before the Administration and is otherwise competent to advise and assist in the presentation of matters before the Administration. Applications by persons not attorneys at law for admission to practice before the Administration shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Administration, Washington, DC 20590. No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Administration. However, this provision and the provisions of §§ 201.22, 201.23, and 201.24 shall not apply to any person who appears before the Administration on his own behalf or on behalf of any corporation, partnership, or association of which he is a partner, officer, or regular employee.

§ 201.22 Firms and corporations.

Except as regards law firms, practice before the Administration by firms or corporations on behalf of others shall not be permitted.

§ 201.23 Hearings.

The Administration in its discretion may call upon a nonattorney applicant for a full statement of the nature and extent of his qualifications. If the Administration is not satisfied as to the sufficiency of the applicant's qualifications it will so notify him by registered mail, whereupon he may request a hearing for the purpose of showing his qualifications. If he presents to the Administration no request for such hearing within 20 days after receiving the notification above referred to, his application shall be acted upon without further notice.

§ 201.24 Suspension or disbarment.

The Administration may, in its discretion, deny admission to, suspend, or disbar any person from practice before the Administration who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or to have engaged in unethical or improper professional conduct. Disrespectful, disorderly, or contumacious language or contemptuous conduct at any hearing before the Administration or a presiding officer shall constitute grounds for immediate exclusion from said hearing by the Presiding Officer. Any person who has been admitted to practice before the Administration may be disbarred from such practice only after he has been afforded an opportunity to be heard.

§ 201.25 Statement of interest.

The Administration, in its discretion, may call upon any practitioner for a full statement of the nature and extent of his interest in the subject matter presented by him before the Administration. Attorneys retained on a contingent fee basis shall file with the Administration a copy of the contract of employment. Practitioners subject to section 807 of the Merchant Marine Act of 1936, as amended, shall comply fully with the requirements of 46 CFR 222.1 (22 FR 1087).

§ 201.26 Former employees.

(a) No former officer or employee of the Administration, after his or her employment with the Administration has ceased, shall act as agent or attorney for anyone other than the United States in connection with any particular matter in which a specific party or parties are involved and in which the United States is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially as an officer or employee of the Maritime Administration through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise while so employed by the Maritime Administration.

(b) No former officer or employee of the Administration shall practice, appear, or represent anyone, directly or indirectly, other than the United States, before the Administration in any matter for a period of 1 year subsequent to the termination of his or her employment with the Administration in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested and which was under his or her official responsibility as an officer or employee of the Administration at any time during the last year of his or her service.

(c) Any person in doubt as to the applicability of paragraph (a) or (b) of this § 201.26 to a particular case or to the postemployment activities of a former officer or employee of the Administration may address an application to the Administration for the Administration's consent to appear, stating his former connection with the Administration or predecessor agency, identifying the matter in which he or she desires to appear and describe in detail his or her participation in or responsibility for the particular matter and the specific party or parties involved and the extent, if any, in which the former officer or employee had participated while employed by the Administration. The applicant shall be promptly advised as to his or her privilege to appear in the particular matter. Separate consents to appear must be obtained in each particular matter.

[G.O. 41, 3d Rev., Amdt. 3, 36 FR 4377, Mar. 5, 1971]

Subpart C—Parties (Rule 3)

§ 201.30 Parties; how designated.

The term "party", whenever used in these Rules, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party requesting official action subject to these Rules shall be designated as "applicant". A party whose petition for leave to intervene is granted pursuant to § 201.78 shall be designated as "intervenor". Only a party as designated in this section may introduce evidence or examine witnesses at hearings.

§ 201.31 Public counsel.

The Assistant General Counsel, Chief, Division of Operating Subsidy Contracts, shall be a party to all proceedings involving operating-differential subsidy contracts. The Assistant General Counsel and his representatives shall be designated as Public Counsel and shall be served with copies of all papers, pleadings, and documents in such proceedings. In addition the General Counsel may designate any member of his staff to serve as Staff Counsel in contract appeal cases or any other proceeding governed by the regulations in this part. Public Counsel or Staff Counsel shall participate in any proceeding to which he is a party, to the extent he deems required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act.

§ 201.32 Substitution of parties.

Upon petition and for good cause shown, the Administration may order a substitution of parties; except that in case of death of a party substitution may be ordered upon suggestion and without the filing of a petition.

Subpart D—Form, Execution and Service of Documents (Rule 4)

§ 201.41 Form and appearance of documents filed with the Administration.

All papers to be filed under the regulations in this part may be reproduced by printing or by any other process, provided the copies are clear and legible; shall be dated, the original signed in ink, and shall show the docket description and title of the proceeding, and the title, if any, and address of the signatory. If typewritten, the impression shall be on only one side of the paper and shall be double spaced, except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall not be more than 8½ inches wide and 12 inches long, with a left margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. Briefs, if printed, shall be printed on paper not less than 6⅛ inches wide and 9¼ inches long, with inside margin not less than 1 inch wide. All briefs over 15 pages shall contain a subject index with page references and a list of authorities cited.

§ 201.42 Subscription, authentication of documents.

(a) Documents filed shall be subscribed: (1) By the person or persons filing same, (2) by an officer thereof if it be a corporation, (3) by an officer or employee if it be a government instrumentality, or (4) by an attorney or other person having authority with respect thereto.

(b) Documents submitted pursuant to stipulation of counsel where no sponsoring witness will be used must be verified.

§ 201.43 Service by parties.

All documents, when tendered for filing should show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service upon such attorney or other representative will be deemed service upon the party. All documents served by mail preferably should be mailed in sufficient time to reach the parties on the date on which the original is due to be filed and should be air mailed if addressee is more than 300 miles distant.

§ 201.44 Date of service.

The date of service of documents shall be the day when the matter served is deposited in the United States mail, shown by the postmark thereon, or is delivered in person, as the case may be.

§ 201.45 Certificate of service.

The original of every document filed with the Administration and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

> I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid (or by delivering in person) a copy to each such party.
>
> Dated at ———— this ——— day of ————, 19—.
>
> (Signature) ————————————————
>
> For————————————————

§ 201.46 Copies of documents for use of the Administration.

Except as otherwise provided in the regulations in this part, an original and fifteen copies of every document shall be filed for use of the Administration, except written testimony and exhibits to be made a part of a record, which shall be filed in triplicate unless otherwise directed.

Subpart E—Time (Rule 5)

§ 201.51 Computation.

In computing any period of time under these Rules, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation.

§ 201.52 Additional time after service by mail.

Whenever service of a document has been made by mail in accordance with § 201.43 three (3) days shall be added to the prescribed period for answer.

§ 201.53 Extension of time to file documents.

Applications for extension of time for the filing of any document shall set forth the reasons for the application and may be granted upon a showing of good cause on the part of applicant. Answers to such applications are permitted.

§ 201.54 Reduction of time to file documents.

Except as prohibited by law, for good cause the Administration, or the Presiding Officer with respect to matters pending before him, may reduce any time limit prescribed in the regulations in this part.

§ 201.55 Postponement of hearing.

Applications for postponement of any hearing date may be granted upon a showing of good cause on the part of the applicant. Answers to such applications are permitted.

Subpart F—Rule Making (Rule 6)

§ 201.61 Petition for issuance, amendment, or repeal of rule or regulation.

Any interested person may file with the Administration a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Administration. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be subscribed to. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in all other aspects to Subpart D of this part. Answers to such petition shall conform to the requirements of Subpart D of this part.

§ 201.62 Notice of proposed rule making.

After receipt of petitions and any answers thereto described in § 201.61, or upon its own initiative, the Administration may, in its discretion, direct that notice thereof be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. Except where publication of notice of proposed rule making and public hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, rules of procedure, or practice of the Administration, or amendments thereto, or any situation in which the Administration for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

§ 201.63 Participation in rule making.

Interested persons will be afforded an opportunity to participate in rule making through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner: *Provided*, That where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, or where a hearing is ordered by the Administration upon petition of any party or upon its own initiative, such hearing shall be conducted pursuant to sections 7 and 8 of the Administrative Procedure Act.

§ 201.64 Contents of rules.

The Administration will incorporate in any rule to be adopted a concise general statement of their basis and purpose.

§ 201.65 Effective date of rules.

The publication or service of any substantive rule shall be made not less than 30 days prior to its effective date except: (a) As otherwise provided by the Administration for good cause found and published in the FEDERAL REGISTER or (b) in the case of rules granting or recognizing exemption or relieving restriction, interpretative rules, and statements of policy.

Subpart G—Formal Proceedings, Notice, Pleadings, Replies (Rule 7)

§ 201.71 Commencement of proceedings.

Formal proceedings may be commenced with respect to any phase of an application for Government aid or other relief, the processing of which by statute requires a public hearing. The Administration may, in its discretion, also direct the holding of a hearing not required by statute for any purpose authorized in the statutes it administers.

§ 201.72 Notice.

Notice of any matter which may result in or involves the institution of a formal proceeding will be given by publication in the FEDERAL REGISTER in sufficient detail and in sufficient time to apprise interested persons of the nature of the issues to be heard and to allow for an opportunity to file petitions for leave to intervene.

§ 201.73 Joinder of proceedings.

(a) Two or more matters which have been set for hearing by the Administration, and which involve similar issues, may be consolidated for the purpose of hearing. Such consolidation may, at the discretion of the Administration, or Presiding Officer after hearing has been ordered, be ordered upon petition of any party to said hearing or upon the initiative of the Administration.

(b) A petition to consolidate shall be filed not later than the first prehearing conference in the proceeding with which consolidation is requested, and shall relate only to then pending applications. If made at such conference, the petition may be oral. A petition which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for the failure to file said petition on time. A petition which does not relate to an application pending at the time of or before a prehearing conference in a proceeding with which consolidation is requested, shall likewise be dismissed unless the petitioner shall clearly show good cause for a failure to file the application within the prescribed period.

§ 201.74 Declaratory orders.

The Administration may issue a declaratory order to terminate a proceeding or to remove uncertainty. Petitions for the issuance thereof shall state clearly and concisely the nature of the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and grounds supporting the petition, together with a full disclosure of petitioner's interest.

§ 201.75 Petitions—general.

All petitions shall be written and shall state the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite the authority upon which the petition rests. The petition shall be served upon all parties named therein or affected thereby. Answers to petitions may be filed.

§ 201.76 Applications for Government aid.

Applications for operating-differential subsidies, charter of Government-owned vessels, and other types of Government aid shall conform to the requirements set forth in the various general orders and other regulations of the Administration specifically provided therefor.

§ 201.77 Amendments or supplements to pleadings.

Amendments or supplements to any pleading will be allowed or refused in the discretion of the Administration if the case has not been assigned for hearing, otherwise in the discretion of the presiding officer designated to conduct the hearing; *Provided*, That after a prehearing conference has been held no amendment shall be allowed which would substantially broaden the issues, unless an opportunity is afforded all parties to answer such amended pleadings and to prepare for hearing upon the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment. If a response to an amended pleading is necessary, it may be filed and served. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading. Whenever by the regulations in this part a pleading is required to be subscribed, the amendment or supplement shall also be subscribed.

§ 201.78 Petition for leave to intervene.

A petition for leave to intervene may be filed in any proceeding before the Administration. The petition will be granted by the presiding officer if the proposed intervenor establishes that it has a substantial interest in the proceeding and will not unduly broaden the issues therein or unduly delay the proceeding. All such petitions shall be filed prior to the opening of the prehearing conference, or if none is held, before the commencement of hearing, unless petitioner shows good cause for allowing the petition at a later time. Intervention petitions shall be served in the same manner as other petitions, and shall be subject to answer. Intervention petitions will be granted where necessary to protect substantial interests of the petitioner and where intervention will not materially broaden the issues. A person granted permission to intervene becomes a party to the proceeding.

§ 201.79 Motions.

All motions and requests for rulings shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, such motions shall be in writing. If made at the hearing, they may be stated orally: *Provided, however*, That the presiding officer may require that such motion be reduced to writing and filed and served in the same manner as a formal motion. Answers to formal motions shall comply with the requirements of § 201.80. Motions and answers thereto shall be addressed to the presiding officer if the case is pending before such officer. Oral argument upon a written motion in which an answer has been filed may be granted within the discretion of the Administration or the presiding officer, as the case may be. A repetitious motion will not be entertained.

§ 201.80 Answers to applications, petitions, or motions.

A pleading filed in response to an application, petition, or motion is called an answer. An answer may be filed to any application, petition, motion or pleading which is required to be served on the answering party or noticed in the FEDERAL REGISTER. An answer to a written application, petition, or motion shall be in writing and shall be filed within ten days after service of the pleading which it answers. Any new matter raised in an answer shall be deemed to be controverted. A response to an answer is called a reply. A short reply restricted to such new matters may be filed within five days of service of the answer.

Subpart H—Responsibilities and Duties of Presiding Officer (Rule 8)

§ 201.85 Commencement of functions of Office of Hearing Examiners.

In proceedings handled by the Office of Hearing Examiners, its functions shall attach upon notice of the institution of a formal proceeding involving a prehearing conference and/or a hearing by the Administration.

§ 201.86 Presiding officer.

A Hearing Examiner of the Office of Hearing Examiners of the Administration will be designated by the Chief Hearing Examiner to preside at hearings required by statute, or directed to be held under the Administration's discretionary authority, in rotation so far as practicable, unless the Administration shall designate one or more Members thereof to serve as presiding officers or members of the staff in proceedings not required by statute.

§ 201.87 Authority of presiding officer.

The officer designated to hear a case shall have authority to arrange and issue notice of the date, time and place of hearings; under appropriate circumstances consolidate dockets for joint hearing; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; hold conferences for the settlement or simplification of matters embraced in the proceedings; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and initially rule upon all motions and petitions before him; administer oaths and affirmations; examine witnesses, direct witnesses to testify or produce available evidence and to submit reports, studies and analyses of data available to them which may be generally relevant and material to the determination of any questions of fact in issue; rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence; exclude irrelevant, immaterial, unreliable, repetitious or cumulative evidence; exclude cross-examination which is primarily intended to elicit self-serving declarations in favor of the witness; and limit cross-examination of any questions of fact in issue; for a full and true disclosure of the facts in issue; act upon petitions to intervene; act upon submission of facts, or argument; initially consider offers of settlement or other proposals of adjustment upon which recommendations to the Administration may be made; hear oral argument at the close of testimony; fix the time for filing briefs, motions and other documents to be filed in connection with hearings and replies thereto; and issue the initial or recommended decisions and dispose of any other pertinent matter that normally and properly arises in the course of proceedings. When the presiding officer is unavailable for any reason, and the exercise of any of his powers and functions, as described herein, is due, timely, and necessary, the Chief Hearing Examiner may exercise such powers and functions until the presiding officer becomes available or until his successor is designated.

§ 201.88 Postponement or change of place by presiding officer.

If, in the judgment of the presiding officer, convenience or necessity so requires he may postpone the time or change the place of hearing.

§ 201.89 Disqualification of presiding officer.

Any presiding officer may at any time withdraw if he deems himself disqualified, in which case another presiding officer will be designated. If a party to a proceeding, or his representative, files in good faith a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Administration will determine the matter as a part of the record and decision in the case.

Subpart I—Summary Disposition (Rule 9)

§ 201.91 Filing of motions, answers.

Any party or (if a petition to intervene shall have been filed but not have been acted upon) any prospective party may at or before the first prehearing conference in any proceeding, or at such later time as might be allowed by the presiding officer, move with supporting affidavits for a summary disposition in his favor of all or any part of the proceeding. Any adverse party may within 20 days serve opposing affidavits or may countermove for summary disposition. Oral argument thereon may be granted in the discretion of the presiding officer.

§ 201.92 Ruling on motion.

The presiding officer may grant such motion if the application, motion, or other pleadings, affidavits or depositions, if any, and matters of official notice show that there is no genuine issue as to any material facts, that there is no necessity that further facts be developed in the record, and that such party is entitled to a decision as a matter of law.

§ 201.93 Review of ruling, appeal.

The order of the presiding officer denying a motion for summary disposition shall be subject to interlocutory appeal under the provisions of § 201.123. An order granting a motion for summary disposition is automatically reviewable by the Administration in accordance with the provisions of § 201.133 and shall not be final until acted upon by the Administration.

Subpart J—Prehearing Conference; Settlements; Procedural Agreements (Rule 10)

§ 201.101 Prehearing conference.

Prior to any hearing a prehearing conference may be held before the presiding officer. Written notice of a prehearing conference shall be transmitted by the Secretary of the Administration or the Chief Hearing Examiner to all parties of record including persons whose petitions for leave to intervene in the proceeding have not theretofore been granted, and where practicable, by general release to the public press.

(a) At the prehearing conference the following matters, among others, shall be considered: (1) Petitions for leave to intervene; (2) motions for consolidation or severance of dockets for joint or separate hearing to the extent that the Administration has not theretofore taken specific action; (3) simplification and delineation of the issues to be heard; (4) designation of matters in respect of which official notice may be taken; (5) requests for discovery and production of evidence considered to be generally relevant and material to the issues in the proceeding; (6) stipulations; (7) limitation of number of witnesses, particularly the avoidance of duplicate expert witnesses; (8) procedure applicable to the proceeding; (9) offers of settlement, as hereinafter to be more particularly discussed in § 201.103; and (10) scheduling of the dates for exchange of exhibits, written testimony both affirmative and rebuttal and establishing the date, time and place for hearing.

(b) If deemed necessary or appropriate, the presiding officer may also, on his own motion, or on motion of Public Counsel direct any party to a proceeding to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant and material to the issues in the proceeding to be sponsored by witnesses available for cross-examination thereon.

§ 201.102 Prehearing rulings.

The presiding officer will, where practicable, issue prehearing rulings, acting on petitions for leave to intervene, delineating the issues, summarizing the rulings made at the conference, specifying a schedule for the exchange of exhibits and written testimony, the date, time and place of hearing and specifying a time for the filing of exceptions to the rulings. The prehearing rulings shall be served upon all parties to the proceeding and any persons who participated in the conference. Exceptions to the prehearing rulings may be filed by any such party or person within the time specified therein. The presiding officer may serve amended rulings in the light of the exceptions presented. Such rulings and amendments, if any, shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but they may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 201.103 Opportunity for agreement of parties and settlement of case.

Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for submission to and consideration by the presiding officer of offers of settlement, or proposals of adjustment together with facts and/or arguments relevant to such offers or proposals without prejudice to the rights of the parties. The presiding officer need not be present at any negotiations of such nature. The presiding officer shall issue an initial or recommended decision thereon recommending approval or disapproval of such offer of settlement or proposal of adjustment to the Administration for final action thereon. No agreement, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. When any settlement does not dispose of the whole proceeding, the remaining issues shall be determined in accordance with sections 7 and 8 of the Administrative Procedure Act.

Subpart K—Discovery and Depositions (Rule 11)

§ 201.109 Discovery and production of documents.

Upon request of any party showing good cause therefor, at the prehearing conference or otherwise upon notice to all other parties, the Administration or presiding officer may direct any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged which constitute or contain evidence relating to any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, and which are in his possession, custody or control. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just. In lieu of such inspections the material may be produced in exhibit form and served upon all parties to a formal proceeding. Such exhibits may also, upon request of any party, be offered in evidence at a hearing.

§ 201.110 Depositions: request for orders to take; time of filing.

The Administration or presiding officer may, upon proper request of a party to a proceeding or under circumstances deemed proper, issue an order to take a deposition regarding any matter, not privileged, which is relevant to the subject matter involved in the proceedings. A motion to take a deposition shall be filed not less than fifteen (15) days before the proposed date for taking the deposition, unless a shorter period is fixed under § 201.54, and shall set forth the reason for the deposition, the place and time of taking, the officer before whom it is to be taken, the name and address of each witness to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and whether the deposition is to be based upon written interrogatories or upon oral examination. If the deposition is to be based upon oral examination, the motion shall contain a statement of the matters concerning which each witness will testify. If the deposition is to be based on written interrogatories, the motion shall be accompanied by the interrogatories to be propounded, serially numbered. Copies of all motions to take depositions, and accompanying interrogatories, if any, shall conform to the requirements of Subpart D of this part. Objection to the taking of such depositions may be made in an answer to such motion. Without prejudice to objection, the answer may also state objection to any individual interrogatory, and if the deposition is permitted, the presiding officer will rule upon such objections to interrogatories. A party served with an order to take a deposition on written interrogatories shall have ten (10) days after date of service of such order unless a shorter period is fixed under § 201.54, within which to file and serve written cross interrogatories, which shall be served pursuant to Subpart D of this part. Answers to applications for cross interrogatories may be filed in accordance with § 201.80. Upon the issuance of an order by the Administration or the presiding officer for the taking of a deposition, the Docket Clerk shall mail a copy thereof to all parties, including the party who requested the deposition. An application to take a deposition in a foreign country will be entertained when necessary or convenient, and authority to take such deposition will be granted upon such notice and other terms and directions as are lawful and appropriate.

§ 201.111 Contents of order.

The order issued authorizing the taking of a deposition will state the name and address of each witness or a general description sufficient to identify him or the particular class or group to which he belongs, the matters concerning which the witness may be questioned, the place where, the time when, and the officer before whom the deposition is to be taken, any or all of which may or may not be the same as set forth in the motion filed. If the deposition is to be taken upon written interrogatories, a list of the interrogatories will accompany the order.

§ 201.112 Record of examination; oath; objections.

The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically, shall be translated to English, if necessary, and shall be transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the officer upon the deposition. Any party served with a notice to take an oral deposition may cross-examine a witness whose testimony is taken under such deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the officer taking the deposition, who shall propound them to the witness and record the answers verbatim together with any objections interposed thereto by adverse parties.

§ 201.113 Submission to witness, changes, signing.

When the testimony is fully transcribed the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless upon objection the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

§ 201.114 Certification and filing by officer; copies.

The officer taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties and is not directly or indirectly interested in the outcome of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)", and shall promptly send the original and two copies thereof, together with the original and two copies of all exhibits, by registered mail to the Administration. Parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and exhibits.

§ 201.115 Waiver of objections and admissibility.

Objections to the form of question and answer shall be made before the officer taking the deposition by parties or representatives present, and if not so made, shall be deemed waived. Depositions shall, when offered at the hearing, be subject to proper legal objections.

§ 201.116 Time of filing.

Any depositions to be offered in evidence shall be filed with the presiding officer not later than the close of the offering party's presentation.

§ 201.117 Inclusion in record.

No deposition or part thereof shall constitute a part of the record in any proceeding until received in evidence.

§ 201.118 Witness fees; expenses of taking depositions.

Witnesses whose depositions are taken pursuant to the regulations in this part, and the officer taking such deposition, shall severally be entitled to the same fees and mileage as are paid in the courts of the United States. All expenses of taking such depositions shall be paid by the party at whose instance the deposition is taken.

Subpart L—Subpoenas (Rule 12)

§ 201.121 Application for subpoena ad testificandum.

An application for a subpoena requiring attendance of a witness at a hearing may be made without notice by any party to the presiding officer, or, in the event that a presiding officer has not been assigned to a proceeding or the presiding officer is not available, to the Chief Hearing Examiner, for action by him or by a member of the Administration. A subpoena for the attendance of a witness shall be issued on oral application at any time and shall be issued upon request of any interested party upon tender of an original and two copies of such subpoena. A record of the issuance of such a subpoena shall be entered in the docket.

§ 201.122 Application for subpoena duces tecum.

An application for a subpoena duces tecum for documentary or tangible evidence shall be in duplicate except that for good cause shown it may be made during the course of a hearing on the record to the presiding officer. Such application need not be served upon all parties. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought and shall be accompanied by an original and two copies of the subpoena sought which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

§ 201.123 Standards for issuance of subpoena duces tecum.

The officer considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpoena.

§ 201.124 Service and quashing of subpoenas.

Subpoenas issued under this section may be served upon the person to whom directed in accordance with Subpart D of this part. Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the officer who issued the subpoena for action by him, and serve a copy of such motion to quash upon the party requesting the subpoena. If the person to whom the motion to modify or quash the subpoena has been addressed or directed has not acted upon such a motion by the return date, such date shall be stayed pending his final action thereon. The Administration may at any time review, upon its own initiative, the ruling of the officer denying a motion to quash a subpoena. In such cases, the Administration may at any time order that the return date of a subpoena which it has elected to review be stayed pending Administration action thereon.

§ 201.125 Attendance and mileage fees.

Persons attending hearings under requirement of subpoenas are entitled to the same fees and mileage as in the courts of the United States, to be paid by the party at whose instance the persons are called.

§ 201.126 Service of subpoenas.

If service of subpoena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Administration, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

§ 201.127 Subpoena of Administration employees, documents, or things.

No subpoena for the attendance of an Administration officer or employee, or for the production of Administration documents or things shall be complied with except upon written authorization of the General Counsel upon written application by the party requesting the subpoena.

Subpart M—Hearing Procedures (Rule 13)

§ 201.131 Presentation of evidence.

(a) *Testimony.* Where appropriate, the Presiding officer may direct that the testimony of witnesses be prepared in written exhibit form and shall be served at designated dates in advance of the hearing. Evidence as to events occurring after the exhibit-exchange dates shall be presented by a revision of exhibits. Witnesses sponsoring exhibits shall be made available for cross-examination. However, unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. The evidentiary record shall be limited to factual and expert opinion testimony. Argument will not be received in evidence but rather should be presented in opening and/or closing statements of counsel and in briefs to the presiding officer subsequently filed.

(b) *Exhibits.* All exhibits and responses to requests for evidence shall be numbered consecutively by the party submitting same and appropriately indexed as to number and title and shall be exchanged on dates prior to the hearing prescribed in the prehearing rulings. Written testimony should be identified alphabetically. Two copies shall be sent to each party and two to the presiding officer. No response to a request for evidence will be received into the record unless offered and received as an exhibit at the hearing. The exhibits, other than the written testimony, shall include appropriate footnotes or narrative material explaining the source of the information used and the methods employed in statistical compilations and estimates and shall contain a short commentary explaining the conclusions which the offeror draws from the data. Rebuttal exhibits should refer specifically to the exhibits being rebutted. Where one part of a multipage exhibit is based upon another part, appropriate cross-reference should be made. The principal title of each exhibit should state precisely what it contains and may also contain a statement of the purpose for which the exhibit is offered. However, such explanatory statement, if phrased in an argumentative fashion, will not be considered as a part of the evidentiary record. Additional exhibits pertinent to the issues may be submitted in a proceeding with the approval of the presiding officer.

(c) *Cooperation on basic data.* Parties having like interests are specifically encouraged to cooperate with each other in joint presentations particularly in such items as basic passenger, cargo, and scheduling data compiled from official or semiofficial sources, and any other evidence susceptible to joint presentation. Duplicate presentation of the same evidence should be avoided wherever possible.

(d) *Authenticity.* The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(e) *Statement of position and trial briefs.* A written statement of position should be exchanged by all counsel with copies to all other parties prior to the beginning of the hearing: *Provided, however,* That Public Counsel or counsel for a public body which has intervened as its interests may appear, may offer his statement of position at the conclusion of the evidentiary hearing, unless such is impracticable. This statement should include a showing of the theory of the case of the party submitting the statement and will not be subject to cross-examination. Trial briefs are acceptable but will not be required.

§ 201.132 Conduct of the hearing.

(a) *Order of presentation.* Normally the order of presentation at the hearing will be alphabetical in each of the following categories:

(1) MarAd statistical material.

(2) Shipper interests, United States and foreign government departments.

(3) Applicants.

(4) Intervenors.

(5) Public counsel.

Normally, rebuttal should be presented without any adjournment in the proceedings.

(b) *Burden of proof.* The burden of proof shall be (1) upon an applicant for any form of government aid or grant; and (2) upon a proponent for the issuance of any rule or order within the jurisdiction of the Administration. The burden of going forward with rebuttal evidence in proceedings involving matters under paragraphs (b) (1) and (2) of this section shall fall upon opposing intervenors. Whenever an intervenor is permitted by the presiding officer to raise or advance a new issue in the proceeding, the burden of proof as to such issue shall fall upon such intervenor. If the burden of proof is met as to such new issue, the other parties shall have the burden of going forward with rebuttal evidence in such regard.

(c) *Requirement for submission of corrected copies of exhibits.* Each party shall present three fully corrected copies of its exhibits to be offered in evidence, one for the docket and two for the presiding officer.

(d) *Offer of exhibits in evidence.* The exhibits and written testimony sponsored by each witness shall be offered in evidence at the close of his direct examination to the extent practicable. After ruling upon motions to strike they shall be received in evidence subject to cross-examination. The presiding officer, in his discretion, may defer such ruling until after completion of cross-examination.

(e)(1) *Cross-examination.* Cross-examination shall be limited to the scope of the direct examination and, except for Public Counsel and counsel for public bodies which have intervened as their interests may appear, to witnesses whose testimony is adverse to the party desiring to cross-examine—this being intended specifically to prohibit so-called "friendly cross-examination". Cross-examination, which is not necessary to test the truth and completeness of the direct testimony and exhibits, will not be permitted.

(2) *Re-cross-examination.* Second rounds of cross-examination normally will not be permitted unless it is necessary to cover new matters raised by a subsequent examination. Cross-examination of any particular witness shall be limited to one attorney for each party and shall not include subjects which are not germane to the interest represented by the cross-examiner.

(f) *Oral motions.* Oral presentation on any motion or objection shall be limited to the party or parties making the motion or objection and the party or parties against which the motion or objection is directed and Public Counsel. Such presentation shall also be limited to one attorney for each party.

(g) *Official notice; public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof.

(h) *Oral argument at hearings.* A request for oral argument at the close of testimony will be granted or denied by the presiding officer in his discretion.

§ 201.133 Appeal from ruling of presiding officer.

Rulings of presiding officers may not be appealed prior to, or during the course of, the hearing except where the presiding officer has granted a Motion for Summary Disposition under Subpart I of this part, or in extraordinary circumstances where prompt decision by the Administration is necessary to prevent unusual delay, expense, or detriment to the public interest, in which instances the matter shall be referred forthwith by the presiding officer to the Administration. Any such appeal shall be filed within fifteen (15) days from the date of the ruling by the presiding officer.

§ 201.134 Separation of functions.

The separation of functions as required by section 5(c) of the Administrative Procedure Act shall be observed in adversary proceedings involving controverted factual issues arising under the regulations in this part.

Subpart N—Evidence (Rule 14)

§ 201.136 Evidence admissible.

In any proceeding under the regulations in this part all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative shall be admissible. Irrelevant and immaterial or unduly repetitious or cumulative evidence shall be excluded.

§ 201.137 Rights of parties as to presentation of evidence.

Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 201.138 Unsponsored written material.

(a) *Material that may be deemed evidence.* Where a formal hearing is held, a party shall be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence including official notice matters covered in § 201.132(g): *Provided,* That such evidence submitted by persons not present at the hearing will not be made a part of the record if opposed to by any party for good cause shown.

(b) *Material that may not be deemed evidence.* Letters expressing views or urging action and other unsponsored written material in respect of matters embraced in, or related to, a formal hearing will be placed in the correspondence section of the docket of the proceeding. These data are not to be deemed part of the evidence or part of the record in the material unless sponsored at the public hearing by an authenticating and supporting witness.

§ 201.139 Documents containing matter both material and not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the party offering shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, or by stipulations other portions of the original document which are material and relevant.

§ 201.140 Records in other proceedings.

When any portion of the record before the Administration in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference.

§ 201.141 Stipulations.

The parties may, by stipulation in writing filed at the prehearing conference, or by written or oral stipulation presented at the hearing or by written stipulation subsequent to the hearing, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. Proposed written stipulations shall be subscribed by the sponsors and served upon all parties of record. Only upon acceptance by all parties to the proceeding may a stipulation be noted for the record or received as evidence.

§ 201.142 Further evidence required by presiding officer during hearing.

At any time during the hearing the presiding officer may call for the production of further relevant and material evidence, reports, studies, and analyses upon any issue, and require such evidence, where available, to be presented by the party or parties concerned, either at the hearing or adjournment thereof in accordance with § 201.132(b). Such material shall be received subject to appropriate motions, cross-examination and/or rebuttal. If a witness refuses to testify or produce the evidence as requested, the presiding officer shall report such refusal to the Administration forthwith.

§ 201.143 Exceptions to rulings of presiding officer unnecessary.

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 201.144 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

Subpart O—The Record: Contents; Development; Perfection; Confidential Treatment (Rule 15)

§ 201.146 Receipt of documents after hearing.

Documents to be submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the presiding officer. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon; and shall be received not later than ten (10) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers should be assigned by counsel or the party. In computing the time within which to file such documents or other writings the five (5) additional days provided in § 201.54 shall not apply. Documents which are submitted but do not comply with the provisions of this rule will be filed in the correspondence section of the docket.

§ 201.147 Official transcript.

The Administration will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith shall be filed with the Administration. Transcripts of testimony will be available in any proceeding under the regulations in this section, and will be supplied by the official reporter to the parties and to the public except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by the contract between the Administration and the reporter.

§ 201.148 Corrections of transcript.

Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record as to matters of substance rather than form, shall be filed with the presiding officer within ten (10) days after receipt of the transcript, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter and shall certify the date when the transcript was received. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing.

§ 201.149 Copies of data or evidence.

Every person compelled to submit data or evidence shall be entitled to retain or procure a copy of transcript thereof on payment of proper costs.

§ 201.150 Record for decision.

The transcript of testimony and exhibits, together with all papers and requests (except the correspondence section of the docket), including rulings and any recommended or initial decisions filed in the proceeding shall constitute the exclusive record for decision. Final decisions will be predicated on the same record, including the initial decision of the presiding officer.

§ 201.151 Objections to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, and a showing of cause satisfactory to the presiding officer, the witness shall disclose such information only in the presence of the presiding officer, official reporter and such attorneys or representatives of each party with demonstrated interests, as the presiding officer shall determine and after all present have been sworn to secrecy. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, or document received, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need not be served upon any other parties than those sworn to secrecy unless so ordered by the presiding officer.

Subpart P—Briefs, Requests for Findings, Decisions, Exceptions (Rule 16)

§ 201.155 Briefs; request for findings.

The time for filing briefs to the presiding officer, and extensions thereof, shall be fixed by him. The period of time allowed shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise. Normally there shall be an opening brief by the moving parties, an answering brief by the proponents of a contrary conclusion and a short reply by the moving parties. Briefs and statements of position as authorized, shall be served upon all parties pursuant to Subpart D of this part. Briefs shall include a summary of evidence, together with references to exhibit numbers and pages of the transcript, and memoranda of law with appropriate citations of the authorities relied upon. They shall contain proposed findings of fact and conclusions in serially numbered paragraphs.

§ 201.156 Requests for extension of time for filing briefs.

Requests for extension of time within which to file briefs shall conform to the requirements of § 201.53. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of briefs.

§ 201.157 Reopening of a case by presiding officer prior to decision.

At any time prior to the filing of his initial or recommended decision, the presiding officer, either upon petition or upon his own initiative may, for good cause shown and upon reasonable notice, reopen the case for the receipt of further evidence.

§ 201.158 Decisions, authority to make and kinds.

To the presiding officer is delegated the authority to render initial or recommended decisions in all proceedings before him, including motions, petitions and other pleadings. Tentative or final decisions will be rendered by the Administration. The same officers who preside at the reception of evidence pursuant to section 7 of the Administrative Procedure Act shall render the initial or recommended decisions except where such officers become unavailable to the Administration, in which case another Presiding Officer will be designated to make such decision or certify the record to the Administration. Where the Administration requires the entire record in the case to be certified to it for initial decision, the Presiding Officer shall first recommend a decision, except that in rule making:

(a) In lieu thereof the Administration may issue a tentative decision or any of its responsible officers may recommend a decision or (b) any such procedure may be omitted in any case in which the Administration finds upon the record that due and timely execution of its functions in the public interest imperatively and unavoidably so requires.

§ 201.159 Decisions; contents and service.

All initial, recommended, tentative, and final decisions, whether rendered orally or in writing shall include a statement of findings and conclusions, as well as the reasons or bases therefor, upon the material issues presented, as well as a statement of the appropriate rule, order, sanction, relief to be imposed, or the denial thereof. A copy of each decision when issued or when transcribed if orally rendered (and all orally presented decisions shall be stenographically recorded) shall be served on the parties to the proceeding, and furnished to interested persons upon request.

§ 201.160 Decision based on official notice.

Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general or specialized knowledge of the Administration as an expert body or of a document required to be filed with or published by a duly constituted governmental body: *Provided*, That where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence of the record, the fact of official notice shall be so stated in the decision, and any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 201.161 Exceptions to, and review by the Administration of initial or recommended decisions.

Within twenty (20) days after the service date of the initial or recommended decision, whether oral or in writing, unless a shorter period is fixed under § 201.54, any party may file exceptions to any conclusions, findings, or statements contained in such decision, and a brief in support of such exceptions. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate pages of transcript and exhibit numbers when referring to the record, and shall be served on all parties pursuant to Subpart D of this part. Whenever the presiding officer renders an initial decision, in the absence of the filing of exceptions thereto, or notice of review thereof by the Administration, such decision, shall upon the issuance of an appropriate order by the Administration, become the decision of the Administration. Upon the filing of exceptions to, or notice of review of, an initial or recommended decision, such decision shall become inoperative until the Administration determines the matter. Where exceptions are filed to, or the Administration reviews, an initial or recommended decision, the Administration, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Administration shall determine to review an initial or recommended decision on its own initiative, notice of such intention shall be served upon the parties within thirty (30) days after the date when the initial or recommended decision is orally rendered and, if in writing, served.

§ 201.162 Replies to exceptions.

Any party may file and serve a reply to exceptions within twenty (20) days after date of service thereof, unless a shorter period is fixed pursuant to § 201.54. Such reply shall indicate pages of the transcript and exhibit numbers when referring to the record.

§ 201.163 Request for extension of time for filing exceptions and replies thereto.

Requests for extension of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of Subpart E of this part. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents.

§ 201.164 Certification of record by presiding officer.

The presiding officer shall certify and transmit the entire record to the Administration when: (a) Exceptions are filed or the time therefor has expired, (b) notice is given by the Administration that the initial or recommended decision will be reviewed on its own initiative, or (c) the Administration requires the case to be certified to it for initial decision.

Subpart Q—Oral Argument; Submittal for Final Decision (Rule 17)

§ 201.166 Oral argument.

If oral argument before the Administration is desired on exceptions or replies to exceptions to an initial, recommended, or tentative decision, or on a motion, petition, or application, a request therefor shall be made in writing properly addressed to the Administration. Any party may make such request irrespective of his filing exceptions or replies. If a brief on exceptions or replies thereto are filed, the request for oral argument shall be incorporated therein. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition, or application or in the reply thereto. Requests for oral argument will be granted or denied in the discretion of the Administration, and, if granted, the notice of oral argument will set forth the order of presentation and the amount of time to be allotted. Those who appear before the Administration for oral argument should confine their argument to points of controlling importance and shall limit their argument to points upon which exceptions have been filed. Where the facts of a case are adequately and accurately dealt with in the initial, recommended, or tentative decision, parties should, as far as possible, address themselves in argument to the conclusions. Effort should be made by parties taking the same position to agree in advance of the argument upon those who are to present their side of the case. The names of persons who will argue and the amount of time requested by each should be received by the Administration not later than ten (10) days before the date set for the argument. Ordinarily, consolidation of appearances at oral argument will permit the parties' interests to be presented more effectively in the time allotted.

§ 201.167 Submission to Administration for final decision.

A proceeding will be deemed submitted to the Administration for its determination as follows: (a) If oral argument is had, on the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions or the date when all parties have stated that no exceptions will be filed; (c) in the case of an initial decision, the date of notice of the Administration to review the decision, if such notice is given.

Subpart R—Stay of Administration's Decision, Reopening of Proceedings (Rule 18)

§ 201.171 Stay of Administration's decision.

The Administration's decision or order shall be stayed pending resolution by the Administration of a petition for reopening, duly filed, and for so long as such Administration's action has not been finally disposed of in accordance with the provisions of section 7 of Department of Commerce Order 117 (Revised).

§ 201.172 Time for filing petition to reopen.

Except for good cause shown, and upon leave granted, petition to reopen under § 201.174, shall be filed with the Administration within twenty (20) days after the date of service of the Administration's decision or order in the proceeding, unless a different period is fixed under § 201.54.

§ 201.173 Reopening by Administration and modification or setting aside of decision.

Upon petition and a showing of compelling cause, filed in accordance with § 201.174, or on its own motion, the Administration may at any time reopen any proceeding under the regulation in this part for rehearing, reargument, or reconsideration in whole or in part. After reasonable notice and opportunity for hearing or such other procedure as the Administration may direct, the Administration may alter, modify or set aside in whole or in part its decision therein if it finds such action is required by changed conditions in fact or law or by the public interest.

§ 201.174 Petition for reopening.

A petition for reopening for the purpose of rehearing, reargument, or reconsideration, shall be made in writing, shall state the grounds relied upon, and conform to the requirements of Subpart D of this part. If the petition is for the purpose of rehearing, said petition shall state the nature and purpose of the new evidence to be adduced and that such evidence was not available at the time of the prior hearing. If the petition be for reargument or reconsideration, the matter claimed to have been erroneously decided shall be specified and the alleged errors briefly stated. In case of exceptional circumstances, satisfactorily shown by the petitioner, a request for modification of rules or orders may be made by telegram or otherwise, upon notice to all parties or attorneys of record, but such request shall be followed by a petition filed and served in accordance with Subpart D of this part.

§ 201.175 Answers to petition to reopen.

Answers to petitions to reopen shall conform to the requirements of Subpart D of this part.

Subpart S—Judicial Standards of Practice (Rule 19)

§ 201.181 General matters.

(a) In general, the functions of the Administration involve hearing procedures comparable to those of a court and accordingly parties to proceedings before the Administration and persons representing these parties are expected to conduct themselves with honor and dignity. For the same reasons, the members of the Administration and those of its employees who participate with the Administration in the determination of formal proceedings are expected to conduct themselves with the same fidelity to standards of propriety that characterizes a court and its staff. The standing and the effectiveness of the Administration are in direct relation to the observance by it, its staff and the parties and attorneys appearing before it of the highest of judicial and professional ethics.

(b) It is essential in cases to be determined after notice and hearing and upon a record, or in any other cases which the Administration by order may designate, that the judicial character of the Administration be recognized and protected. As a consequence, from the time of the filing of an application or a petition which can be granted by the Administration only after notice and opportunity for hearing, or in the case of other matters from the time of notice by the Administration that such matters shall be determined after notice and opportunity for hearing, no ex parte communications, as hereinafter defined, are to constitute or be considered part of the record on which the final decision is to be predicated.

§ 201.182 Improper pressures.

It is determined to be improper that there be any effort by any person interested in a case before the Administration to attempt to sway the judgment of the Administration by undertaking to bring pressure or influence to bear upon the Administration, its staff, or the presiding officer assigned to the proceeding. It is further determined to be improper that such interested persons or any member of the Administration's staff or the presiding officer directly or indirectly give statements to the press or radio, by paid advertisements or otherwise, designed to influence the Administration's judgment in the matter. In addition, it is further determined to be improper that any person solicit communications to the Administration or any of its members, its staff or the presiding officer in the case other than by counsel of record who shall serve copies thereof on all other parties to the proceeding.

§ 201.183 Ex parte communications.

(a) Requests for expeditious treatment of matters pending with the Administration are deemed communications on the merits and as such are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications from parties to a proceeding should be in the form of a motion and are to be dealt with as such by the Administration, the presiding officer, and the parties to the proceeding. Any such request which is not made as a motion shall be placed in the public correspondence file and will not be considered by the Administration or any of its staff members or the presiding officer in connection with the disposition of the case.

(b) Written or oral communications involving any substantive or procedural issue in a matter subject to public hearing directed to a Member of the Administration, its staff, or the presiding officer in the case, from any individual in private or public life shall be deemed a private communication in respect of the merits of the case. These communications, unless otherwise provided for by law or a published rule of the Administration are deemed ex parte communications and are not to be considered part of any record or the basis for any official action by the Administration, members of its staff or the presiding officer: *Provided, however,* That this prohibition shall not be determined to apply to informal petitions or applications filed with the Administration; the usual informal communications between counsel including discussions directed toward the development of a stipulation or settlement between parties; communications of a nature deemed proper in proceedings in U.S. Federal courts; and communications which merely inquire as to the status of a proceeding without discussing issues or expressing points of view. Any prohibited communications in writing received by a Member of the Administration, its staff or the presiding officer shall be made public by placing it in the correspondence file of the docket which is available for public inspection and will not be considered by the Administration or the presiding officer as part of the record for decision. If the ex parte communication is received orally, a memorandum setting forth the substance of the conversation shall be made and filed in the correspondence section of the appropriate public docket.

Subpart T—Effective Date (Rule 20)

§ 201.185 Effective date and applicability of rules.

The regulations in this part shall become effective October 23, 1964, and shall apply only to cases which are designated for hearing on or after October 23, 1964: *Provided, however,* That the regulations in this part shall be applicable to cases designated for hearing prior to October 23, 1964, if consolidated with a case designated for hearing on or after that date. All other cases designated for hearing prior to October 23, 1964, shall be governed by the rules in effect immediately prior to such date.

Subpart U—Charges for Orders, Notices, Rulings, Decisions

§ 201.186 Charges for documents.

(a) *Copies of orders.* Notices, rulings, decisions (initial and final) issued by Hearing Examiners, the Maritime Subsidy Board and the Maritime Administration in all docketed proceedings may be obtained by parties other than those involved in docketed proceedings by requesting to be placed on the (monthly) mailing list.

(b) *Fees.* (1) Each request to be placed on the mailing list for one year shall be accompanied by the sum of $15, which sum will be retained to recover the cost of processing.

(2) A subscriber on the mailing list will automatically receive copies of all orders, notices, rulings and initial and final decisions without charge.

(3) Single copies of initial and/or final decisions may be obtained upon request to Secretary, Maritime Subsidy Board, Washington, DC, 20590. Such request shall be accompanied by the sum of $1, which sum will be retained to recover the cost of processing the request.

[G.O. 41, 3d Rev., Amdt. 1, 31 FR 3397, Mar. 4, 1966]

PART 202—PROCEDURES RELATING TO REVIEW BY SECRETARY OF TRANSPORTATION OF ACTIONS BY MARITIME SUBSIDY BOARD

Sec.
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202.11 Ex parte communications.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; sec. 204(b), as amended, 46 U.S.C. 1114(b); Reorganization Plan No. 7 of 1961 (26 FR 7315).

SOURCE: 32 FR 2705, Feb. 9, 1967, unless otherwise noted.

§ 202.1 Purpose.

The rules of this part prescribe procedures relating to Secretarial review of any decision, report, order or action of the Maritime Subsidy Board (Board) pursuant to Department Order 117-A (31 FR 8087, 15331). Section 6 of Department Order 117-A is reprinted here for the convenience of the public.

SEC. 6. *Review and finality of actions by Maritime Subsidy Board.* .01 The Secretary of Transportation (hereinafter referred to as "Secretary") may, on his own motion or on the basis of a petition filed as hereinafter provided, review any decision, report and/or order of the Maritime Subsidy Board based on a hearing held pursuant to (a) statutory requirements or (b) Board order, by entering a written order stating that he elects to review the action of the Board. Copies of all orders for review shall be served on all parties of record (which phrase includes the Board). Petitions for review under this paragraph may be filed by parties of record, shall be in writing, and shall state the grounds upon which petitioner relies. Ten (10) copies of such petitions for review, together with proof of service thereof on all parties of record, shall be filed with the Secretary within fifteen (15) days after the date of the service of the Board's decision, report or order. Parties of record may file replies in writing thereto. Ten (10) copies of such replies, together with proof of service thereof on the petitioner and all other parties of record, shall be filed with the Secretary within ten (10) days after the date the petition for review is timely filed. Petitions for review and replies thereto shall be limited to the record before the Board. If a petition for review is filed within the time prescribed, a decision, report or order of the Board shall be final fifteen (15) days after expiration of the time prescribed for filing a reply thereto unless the Secretary, prior to expiration of the fifteen (15) days, enters a written order granting the petition for review. If no petition for review is filed within the time prescribed, a decision, report or order of the Board shall be final twenty (20) days after the date of service of the decision unless the Secretary, prior to expiration of the twenty (20) days, enters a written order stating that he elects to review the action of the Board. If upon any review the decision of the Secretary rests on official notice of a material fact not appearing in the evidence in the record, any party of record shall, if request is made within ten (10) days after the date of service of the Secretary's decision on said party, be afforded an opportunity to show the contrary. The said ten (10) days shall constitute the period for a "timely request" within the meaning of section 7(d) of the Administrative Procedure Act.

.02 The Secretary may on his own motion review all actions of the Maritime Subsidy Board other than those referred to in paragraph .01 of this section by entering a written order stating that he elects to review the action of the Board. Any person having an interest in any action of the Board under this paragraph shall have the privilege of submitting to the Secretary within ten (10) days after the date of such Board action, a request that the Secretary undertake such review. Such request shall be in writing and shall state the grounds upon which the person submitting the same relies and his interest in the action for which review is requested. Ten (10) copies of such requests shall be submitted to the Secretary. Any other person having an interest in such matter shall have the privilege of submitting within fifteen (15) days after the date of the Board's action, a written request that the Secretary not exercise such review. Copies of request that the Secretary undertake or not exercise review will be open for public inspection at the office of the Secretary of the Board. If either a request that the Secretary undertake review or a request that he not exercise review is submitted within the time prescribed, an action of the Board shall be final in ten (10) days after expiration of the time prescribed for submission of a request that review not be exercised unless the Secretary, prior to the expiration of the ten (10) days, enters a written order stating that he elects to review the action of the Board. If neither a request that the Secretary undertake review nor a request that he not exercise review is submitted within the time prescribed, an action of the Board shall be final in twenty (20) days after the date of such action unless the Secretary, prior to expiration of the twenty (20) days, enters a written order stating that he elects to review the action of the Board. Copies of all orders for review shall be served upon the Board, and upon all persons filing requests as herein described.

.03 If a timely petition for reconsideration is filed under the rules prescribed by the Board, the time for filing a petition or request for review by the Secretary under paragraph .01 or .02 of this section, respectively, or the entry of an order by the Secretary on his own motion electing to review an action of the Board under paragraph .01 or .02 of this section, shall, in the case of actions under paragraph .01 of this section run from the date of service of the Board's action and, in the case of actions under paragraph .02 of this section, run from the date of the Board's action, finally disposing of the issues presented by the petition for reconsideration.

.04 In computing any period of time under this section, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such holiday. The prescribed time for action by the Secretary in a proceeding in which additional days have been added pursuant to the provisions of this paragraph shall be extended by the total of such additional days.

.05 Petitions and requests for review by the Secretary shall not be filed:

a. Unless the petitioner shall have first exhausted his administrative remedies (other than a petition for reconsideration) before the Maritime Subsidy Board; nor

b. With respect to interlocutory decisions of the Maritime Subsidy Board in actions or proceedings referred to in paragraphs .01 and .02 of this section.

.06 The Secretary may, for good cause and/or in order to prevent undue hardship in any particular case, waive or modify any procedural provision of this section by written order.

§ 202.2 Time and place for filings.

All petitions, requests and replies relating to Secretarial review of Maritime Subsidy Board actions shall be filed with the Office of the Secretary of Transportation, Department of Transportation. Such papers shall be filed in accordance with the provisions of and within the time periods prescribed by Department Order 117-A.

§ 202.3 Form of petitions, requests and replies.

(a) All papers presented to the Secretary, other than records, shall bear on the cover the name and post office address of the party, and the name and address of the principal attorney or authorized representative (if any) for the party concerned. Certification shall be made that service of the paper has been made upon all parties of record (if any) and upon the Secretary of the Maritime Subsidy Board. One copy of every paper filed with the Secretary must in addition bear at its close the hand written signature of the party or attorney.

(b) All papers presented to the Secretary, other than records, shall, unless they are fewer than 10 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of the cases (alphabetically arranged), textbooks, statutes and other material cited, with references to the pages where they are cited.

(c) Whenever a reference is made to a transcript, exhibit or other part of the record, such reference must be accompanied by a specific citation identifying the document and indicating the relevant page number of the document concerned.

(d) Papers filed with the Secretary should be logically arranged, with proper headings, concise, and free from irrelevant and unduly repetitious matter.

(e) It will not be necessary to reproduce the opinion of the Board.

§ 202.4 Petitions and requests for review—content.

Petitions and requests for review shall contain in the order here indicated—

(a) A reference to the decision, report, order or action of the Board;

(b) A concise statement of the interest of the party submitting the paper;

(c) A concise summary statement of the case containing that which is material to the consideration of the questions presented;

(d) A listing of each of the grounds upon which the party seeking review relies, expressed in the terms and circumstances of the case, each ground set forth in a separate, numbered paragraph;

(e) The argument, generally amplifying the material in paragraph (d) of this section and exhibiting clearly the points of law, policy and fact being presented, citing the authorities, statutes and other material relied upon. The argument should separately identify and treat each of the grounds upon which review is sought. In cases where reversible legal error is contended, a full legal argument on the points concerned should be presented. In cases where policy error is contended, it should be pointed out what policy of the Board is alleged to be wrong, what is wrong with it and what policy the submitting party advocates as the correct one. In cases where reversible factual error is contended, the findings of fact alleged to be erroneous should be pointed out along with citations to the record where appropriate. The party should further indicate precisely what it contends to be the correct findings of fact, with supporting references;

(f) A conclusion, specifying with particularity the action which the submitting party believes the Secretary should take.

§ 202.5 Replies and requests that review not be exercised—content.

Replies and requests that review not be exercised shall contain in the order here indicated—

(a) A reference to the decision, report, order, or action of the Board;

(b) A concise statement of the interests of the party submitting the paper;

(c) Where deemed necessary by the submitting party, a concise summary statement of the case explicitly pointing out any inaccuracy or omission in the statement of the other side, with references to the record where appropriate;

(d) A listing of the reasons why review should not be exercised, each reason set forth in a separate, numbered paragraph;

(e) The argument generally amplifying the material in paragraph (d) of this section and, in addition, specifically replying to the points of law, policy and fact presented by the other side (each stated separately) citing the authorities, statutes, and other material relied upon by the submitting party;

(f) A conclusion, specifying with particularity the action which the submitting party believes the Secretary should take.

§ 202.6 Grant or denial of review.

(a) A petition or request for review by the Secretary of any decision, report, order or action of the Board will not be granted unless significant and important questions of over-all policy requiring the Secretary's attention are involved or there appears to be significant legal, policy, or factual error in the Board's action.

(b) The parties and the Secretary of the Board will be notified, by Order, of the Secretary's decision to review a case on his own motion, and of his decision to review or to deny review of a case where a petition or request concerning review has been filed.

(c) Promptly upon notice of a decision by the Secretary to review a case subject to review under section 6.01 of Department Order 117-A, the Secretary of the Board shall certify to the Secretary the complete record of the proceeding before the Board and shall serve upon all parties a copy of such certification which shall adequately identify the matter so certified. The Secretary of the Board shall further serve upon all parties a copy of any further communication from the Board or Maritime Administration on such a case.

§ 202.7 Supplemental briefs.

If an order taking review is entered by the Secretary, further briefs supplementing the arguments set forth in the petitions and replies may be requested in cases where the Secretary deems such to be appropriate and desirable.

§ 202.8 Oral argument.

Generally, oral argument will not be necessary. However, the Secretary reserves the right to schedule such when he deems it desirable.

§ 202.9 Decisions by the Secretary of Transportation.

Decisions of the Secretary will be reached in accordance with applicable law and the evidence. Upon the determination of a case taken under review by the Secretary, a written decision and opinion which states the Secretary's conclusions and an explanation thereof will be issued.

§ 202.10 Petitions for reconsideration.

Petitions for reconsideration of decisions by the Secretary in any case taken under review will be considered upon a showing of good cause, if filed within ten (10) days of service of the Secretary's decision.

§ 202.11 Ex parte communications.

Oral or written communications with the Department concerning a matter subject to Secretarial review under section 6.01 of Department Order 117-A, unless otherwise provided by law or by order, rule, or regulation of the Department, shall be deemed ex parte communications and shall not be part of the record and shall not be considered in making any recommendation, decision or action; *Provided, however,* That this rule shall not apply to customary informal communications with Department counsel, including discussions directed toward the development of a stipulation or settlement between parties; communications of a nature deemed proper in proceedings in U.S. Federal courts; and communications with Department counsel which merely inquire as to procedures or the status of a proceeding without discussing issues or expressing points of view. Any written communication subject to the above stated rule received by the Department shall be placed in the correspondence file of the case, which is available for public inspection. If an oral communication subject to the above stated rule is received, a memorandum setting for the the substance of the conversation shall be made and placed in the correspondence file.

PART 203—PROCEDURES RELATING TO CONDUCT OF CERTAIN HEARINGS UNDER THE MERCHANT MARINE ACT, 1936, AS AMENDED

Sec.
203.1 Scope of rules.
203.2 Applications.
203.3 Opposition to applications.
203.4 Replies.
203.5 Types of hearings.
203.6 Oral evidentiary hearing before one or more members.

AUTHORITY: Secs. 204(b), 605(c) and 805(a), Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1114(b), 1175(c) and 1223(a)).

SOURCE: 55 FR 12358, Apr. 3, 1990, unless otherwise noted.

§ 203.1 Scope of rules.

(a) The provisions of this part apply to applications which involve statutorily mandated hearings under sections 605(c) and 805(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1175(c), 1223(a)), hereinafter referred to as the "Act", conducted by the Maritime Administrator or Maritime Subsidy Board of the Maritime Administration, hereinafter referred to collectively as the "Administration".

(b) The provisions of this part are to be construed consistently with the Administration Rules of Practice and Procedure in 46 CFR part 201. If this part and 46 CFR part 201 conflict, this part shall govern.

§ 203.2 Applications.

(a) Notice of all applications subject to this part shall be published in the FEDERAL REGISTER, in accordance with the provisions of 46 CFR 201.72.

(b) All applications under section 605(c) of the Act shall specify, at a minimum, full details of the existing or proposed new or amended service, to include itineraries and the number and type of vessels currently operated in the trade or trade route, the number and type of vessels proposed to be operated in the trade or trade route, the frequency of sailings and port calls and the nature and extent of U.S.-flag and any foreign-flag competition. As a matter of discretion, the Administration may request additional information, which may be protected by a confidentiality ruling, if justified. If the application is one for additional service on a route in which the applicant has an established service, or for an existing service, then the applicant must include information on its previous three years of operation. Applicants for permission under section 805(a) of the Act must describe clearly the scope of permission sought, including details of proposed domestic service and existing or proposed foreign service, as well as the applicant's operating structure.

(c) Applications under section 605(c) of the Act shall be filed on Form MA-964, in accordance with the instructions annexed thereto. Copies of Form

MA-964 may be obtained on request from the Secretary of the Administration.

(d) Applications for permission under section 805(a) of the Act shall be submitted in accordance with the procedures set forth in 46 CFR part 380, and shall comply with all of the requirements of that part.

§ 203.3 Opposition to applications.

(a) *Required documents.* A person seeking to oppose an application shall file with the Secretary of the Administration, and concurrently serve upon the applicant, a petition for leave to intervene, together with an answer, within the time period specified in the FEDERAL REGISTER notice of the application. Normally, twenty days will be provided.

(b) *Petition for leave to intervene.* The petition for leave to intervene shall specify the basis upon which such person asserts a right to intervene and shall set forth with particularity:

(1) The number and type of U.S.-flag vessels currently operated by the person seeking intervention in the trade or trade route to which the application pertains.

(2) The frequency of sailings of vessels operated by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(3) The specific ports of call conducted by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(4) The average annual carriage by such person for the past 36 months on the trade route to which the application pertains.

(5) If applicable, specific information detailing firm and definite plans for the inauguration of a new service, including, as appropriate, but not limited to, approval by the board of directors or general partners, membership in applicable conference agreements, office openings or the retention of agents in the proposed service area, acquisition of vessels and related equipment, subsidy applications, applications for any needed Government approvals or advertisement for the proposed service.

(6) Such other information as the person believes should be considered in a determination of such person's right to intervene.

(c) *Answer.* (1) The answer shall be simultaneously filed with the petition for leave to intervene and shall specify the basis upon which such person asserts the application should be denied or granted subject to modifications.

(2) The answer shall set forth with particularity:

(i) The ground upon which opposition is based;

(ii) The factual matters which such person believes must be determined by the Administration;

(iii) The legal matters which such person believes must be determined by the Administration;

(iv) For each factual and legal matter raised such person's position and basis therefor; and

(v) The precise nexus between each factual and legal matter raised and the decision of the Administration.

(d) *Right to intervene in Opposition to applications.* (1) Leave to intervene in opposition to applications under section 605(c) of the Act will only be granted to operators of U.S.-flag vessels, and only to the extent, as demonstrated by the petition for leave to intervene, that such person provides an existing service, or that such person has firm and definite plans to provide a service, by a showing that its vessels operate in the same trade or on the same trade route as that proposed by the applicant and so operate in a manner competitive with the specific service proposed by the applicant. Although persons seeking intervention need not call at the same specific ports proposed by the applicant by direct vessel calls, any filing based on intermodal service in opposition to an application shall demonstrate that such person regularly competes by intermodal service for cargo moving to or from ports in the service proposed by the applicant. The burden of demonstrating competition between the vessels of the person seeking intervention and those of the applicant will be with the person seeking such intervention

Leave to intervene will not be granted to those conducting a competing service on an intermittent or *de minimis* basis.

(2) Leave to intervene in opposition to applications under section 805(a) of the Act will be granted, as provided in the statute, to every person, firm, or corporation "having any interest" in such application.

§ 203.4 Replies.

Within ten (10) days after the date for filing answers, the applicant may file a reply specifically addressed to the issues raised in the answers and to oppose the grant to any petitioner of leave to intervene.

§ 203.5 Types of hearings.

(a) *Oral Evidentiary Hearing:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, and that the case is anticipated to involve the submission of extensive evidence, or the Administration determines that it is otherwise appropriate, the Administration may issue an order referring the case to an Administrative Law Judge for oral evidentiary hearing. Such hearing shall be conducted in accordance with the procedures set out in 46 CFR part 201. The Administration may resolve issues of intervention in such order or refer such issues to the Administrative Law Judge. The burden of establishing that there is a disputed issue of material fact is upon the party seeking the oral evidentiary hearing.

(b) *Hearing on Submission of Written Evidence and Argument:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, but which is not anticipated to involve the submission of extensive evidence, the Administration may fulfill the hearing requirement in sections 605(c) and 805(a) of the Act by rendering a decision solely on the merits of papers submitted, provided that a full and true disclosure of the facts is made and such procedure is fair to all parties. The Administration may, in its discretion, direct the submission of briefs on legal issues together with evidence in written form, and/or the holding of oral argument before the Administration prior to issuing its final decision on the proceeding.

(c) *Show Cause Proceeding:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding does not or is not likely to involve a disputed issue of material fact or that if such facts exist they can be resolved on the basis of available information subject to official notice, and if the case is not anticipated to involve the submission of extensive evidence, the Administration may determine to handle the matter by show-cause proceeding. In that event, it will issue a decision setting out its tentative conclusions on all of the matters of fact and law at issue in the proceeding. A Notice summarizing such decision shall be published in the FEDERAL REGISTER in accordance with 46 CFR 201.72. Interested persons may file comments, including support or rebuttal for any matter officially noticed, within 30 days of the date of service of the tentative decision and responses to such comments shall be filed within ten days thereafter unless a shorter or longer period is provided by the Administration for such comments and answers.

§ 203.6 Oral evidentiary hearing before one or more members.

If an oral evidentiary hearing is to be conducted, the Maritime Administration, or the Maritime Subsidy Board or one or more of its members, may conduct such hearing. A member who is not present at the hearing may participate in the consideration and the decision of the case where the oral evidentiary hearing, if held, has been stenographically recorded in full and transcribed for the member's review.

PART 204—CLAIMS AGAINST THE MARITIME ADMINISTRATION UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

204.1 Scope and procedure for filing claims.
204.2 Claims payable.
204.3 Claims not payable.
204.4 Time limitations on claims.
204.5 Notification of claimant of action on claim.
204.6 Payment of claims.
204.7 Delegation of authority.
204.8 Where to file claims.
204.9 Indemnity or contribution.
204.10 Attorney's fees.

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a) (2) and (3).

SOURCE: 50 FR 25711, June 21, 1985, unless otherwise noted.

§ 204.1 Scope and procedure for filing claims.

This part prescribes the requirements and procedure for administrative settlement of claims against the United States, involving the Maritime Administration, under the Federal Tort Claims Act, based on death, personal injury, or damage to or loss of property. The controlling regulations are promulgated by the Department of Justice at 28 CFR Part 14—Administrative Claims Under Federal Tort Claims Act. These regulations supplement those of the Department of Justice and provide specific guidance regarding claims processing in the Maritime Administration.

§ 204.2 Claims payable.

Claims for death, personal injury, or damage to or loss of real or personal property are payable when the death, injury or damage is caused by a negligent or wrongful act or omission of an employee of the Maritime Administration, while acting within the scope of employment and under circumstances in which the United States, if a private person, would be liable to the claimant under the law of the place where the act or omission occurred.

§ 204.3 Claims not payable.

A claim is not payable under the regulations in this Part 204, if such tort claim is excluded from the scope of the Federal Tort Claims Act, as amended, pursuant to 28 U.S.C. 2680.

§ 204.4 Time limitations on claims.

(a) A claim can be settled only if presented in writing within two years after it accrues.

(b) The two year statute of limitations is not tolled until the Maritime Administration receives from a claimant, or the claimant's duly authorized agent or legal representative, an executed Standard Form 95, "Claims for Damage, Injury, or Death," or written notification of an incident, together with a claim for money damages in a sum certain, for death, personal injury, or damage to or loss of real or personal property. When a claim is received in any office, mail unit, or other Maritime Administration activity which does not have settlement authority over the claim, such office, unit or activity shall transmit it to the official vested with such authority without delay (see § 204.13, this part).

§ 204.5 Notification to claimant of action on claim.

(a) If a claim is approved (either for the amount claimed or less than such full amount), the claimant, prior to the disbursement of an award, shall sign a document releasing the United States, its agents and employees from all further claims relating to the incident giving rise to the approved claim.

(b) If the claim is finally denied, the official vested with such authority shall inform the claimant by certified or registered mail of the final denial of the claim. Notification of final denial shall include a statement that a claimant who does not accept or is dissatisfied with the action may institute suit against the United States not later than six months after the date of mailing of the notice of final denial.

(c) A claimant may regard the failure of the Maritime Administration to make a final disposition of a claim within six months after the date of receipt of the claim by the Maritime Ad ministration as a final denial for the purpose of filing suit.

§ 204.6 Payment of claims.

(a) Once the amount to be paid has been agreed upon, the agency shall attempt to forward a check for such amount to the claimant within thirty days.

(b) If a claimant is represented by an attorney, both the claimant and the claimant's attorney shall be designated as payees on any check delivered to the claimant's attorney.

§ 204.7 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of $25,000, the Chief Counsel of the Maritime Administration is authorized to deny or settle and authorize payment of tort claims in any amount.

(b) The Associate Administrator for Policy and Administration is authorized to deny or settle and authorize payment of all tort claims in an amount not exceeding $10,000, except that the Superintendent, United States Merchant Marine Academy, may deny or settle and authorize payment of tort claims originating from occurrences at the Academy in amounts not exceeding $5,000.

§ 204.8 Where to file claims.

Claims shall be filed with the appropriate official as follows:

(a) Chief Counsel (MAR-220), Maritime Administration, Department of Transportation, Room 7232, Nassif Building, 7th and D Streets SW., Washington, DC 20590 (All claims over $10,000)

(b) Associate Administrator for Policy and Administration (MAR-300), Maritime Administration, Department of Transportation, Room 7217, Nassif Building, 7th and D Streets SW., Washington, DC 20590 (All claims over $5,000 but not over $10,000 originating at Academy; and all other claims not over $10,000)

(c) Superintendent (MMA-5100), United States Merchant Marine Academy, Maritime Administration, Kings Point, N.Y. 11024 (All claims not over $5,000 originating at Academy)

§ 204.9 Indemnity or contribution.

(a) *Sought by the United States.* If a claim arises under circumstances in which the United States is entitled to indemnity or contribution under a contract or the applicable law governing joint tort-feasors, the Chief Counsel of the Maritime Administration shall notify the third party of the claim and request the third party to honor its obligation to the United States or to accept its share of joint liability. If the issue of third party indemnity or contribution is not satisfactorily adjusted, the underlying claim shall be settled only after consultation with the Department of Justice as provided in 28 CFR 14.7

(b) *Sought from the United States.* Claims for indemnity or contribution from the United States shall be settled under this part only if the incident giving rise to liability and the claim is otherwise cognizable under this part.

§ 204.10 Attorney's fees.

Attorney's fees for any claim settled under this part are limited to not more than twenty percent of the amount paid in settlement.

PART 205—AUDIT APPEALS; POLICY AND PROCEDURE

CONTRACTS WITHOUT DISPUTES ARTICLE

Sec.
205.1 Purpose.
205.2 Policy.
205.3 Procedure.
205.4 Finality of decisions.

CONTRACTS WITH DISPUTES ARTICLE

205.5 Contracts containing disputes article.

AUTHORITY: Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

SOURCE: General Order 78, Rev., 30 FR 11680, Sept. 11, 1965, unless otherwise noted.

CONTRACTS WITHOUT DISPUTES ARTICLE

§ 205.1 Purpose.

The purpose of this part is to establish the policy and procedure for seeking redress and for appeals by parties to any contracts entered into by the

Maritime Subsidy Board or the Maritime Administration under its authorities, from the findings, interpretations, or decisions reflected in annual or special audits made by the Maritime Administration pursuant to the provisions of such contracts.

§ 205.2 Policy.

Any contractor who disagrees with the findings, interpretations, or decisions in connection with audit reports of the Maritime Administration and who fails to settle said differences by negotiation with the appropriate Coast Director's office, may submit an appeal from such findings, interpretations, or decisions in accordance with § 205.3.

§ 205.3 Procedure.

(a) Appeals shall be made in writing to the Maritime Administrator within 6 months following the date of the document notifying the contractor of the audit findings, interpretations, or decisions of the appropriate Coast Director's office. However, the Maritime Administrator may, at his discretion, extend this limitation in the case of extenuating circumstances.

(b) The appellant will be notified, in writing, if a hearing is to be held or if additional facts are to be submitted for consideration in connection with the appeal.

(c) After a decision has been rendered by the Maritime Administrator, the appellant will be notified accordingly, in writing.

§ 205.4 Finality of decisions.

A decision of the Maritime Administrator shall be final on all questions of fact involved in the appeal, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

CONTRACTS WITH DISPUTES ARTICLE

§ 205.5 Contracts containing disputes article.

Where the contract contains a disputes article the contractor may dispute audit findings, interpretations, or decisions made by the Maritime Administration pursuant to the provisions of said contract and the decision on such dispute and any appeal therefrom shall be governed by the terms of the disputes article of the contract.

PART 206—MISCELLANEOUS FEES

Subpart A—Charges for Special Statistical Data

Sec.
206.1 Purpose.
206.2 Requests for data.
206.3 Confidentiality of data.
206.4 Charges.

Subpart B—Charges for Copies of Regulations

206.10 Mailing list.
206.11 Individual copies of orders.

Subpart C—Applications for Sale of Subsidized Vessel

206.20 Charges for processing applications.

Subpart A—Charges for Special Statistical Data

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 41 FR 50259, Nov. 15, 1976, unless otherwise noted.

§ 206.1 Purpose.

The purpose of this subpart is to establish the policy and procedures applicable to requests for statistical data and reports, other than those provided pursuant to Part 207 of this subchapter.

§ 206.2 Requests for data.

(a) *Requests.* Any request for statistical data or reports maintained by the Maritime Administration, other than those provided pursuant to Part 207 of this subchapter, shall be submitted in writing to the Maritime Administrator, Department of Transportation, Maritime Administration, U.S. Department of Transportation, Room 3898B

14th and E Streets, NW., Washington, DC 20590. The request must contain a detailed narrative explanation of the information requested and of the output report format desired which indicate: whether the data are to be coded, decoded, or both; the order in which the data are to be presented; the totals and subtotals required for each category, as appropriate; and the number of reports required. The request must also clearly indicate that it is submitted pursuant to this subpart.

(b) *Approval of request.* Approval, in whole or in part, of any request submitted pursuant to paragraph (a) of this section will be made at the discretion of the Maritime Administrator, Department of Transportation on the basis of the nature and scope of the work, the availability of personnel and administrative services, and other considerations pertaining to the feasibility of producing the requested information.

(c) *Notification of approval or disapproval.* Upon approval, in whole or in part, or disapproval in whole, of any request submitted pursuant to paragraph (a) of this section, the requesting party will be notified of the following: The statistical data and reports which can be produced; the statistical data and reports which cannot be produced, if any, and the reasons therefor; the estimated time to effect production, based on the charges set forth in § 206.4, which amount must be received before work begins.

(d) *Cost adjustment.* If the amount of the advanced payment required by paragraph (c) of this section is insufficient to cover the actual cost of production, the requesting party will be required to make payment of the additional amount necessary before work will be continued. In the event that the amount of the advance payment exceeds the actual cost of production the amount of the excess payment will be refunded.

§ 206.3 Confidentiality of data.

The original sources of statistical data requested under this subpart are "business confidential" and data shall not be supplied in such form as to permit competitors to extrapolate the data supplied by the original sources to the Maritime Administration and, thereby, determine the carryings of individual competitors. Appropriate written waivers of confidentiality from persons supplying the data will be accepted and honored by the Maritime Administration to the extent practicable in the preparation of statistical data and reports under this subpart.

§ 206.4 Charges.

To cover the cost of furnishing statistical data and reports under this subpart, the following charges shall apply:

Computer Metered Minute	$23.49
Programmer/Analyst Man-Hour Regular Time	22.80
Statistician/Analyst Man-Hour Regular Time	17.35
Reel of Magnetic Tape Created	25.00
Computer Printed Page	.10
Standard Copier Printed Page	.07
Reel of Magnetic Tape Duplicated	25.00
All Other Costs (e.g., typing, postage, etc.)	(1)

[1] Actual.

Subpart B—Charges for Copies of Regulations

AUTHORITY: Sec. 1, 49 Stat. 292, sec. 1, 49 Stat. 1335, sec. 204, 49 Stat. 1987, sec. 501, 65 Stat. 290, 56 Stat. 1067; 15 U.S.C. 189a, 189, 46 U.S.C. 1114, 31 U.S.C. 483a, 15 U.S.C. 1520.

SOURCE: General Order 91, 27 FR 1169, Feb. 8, 1962. Redesignated at 29 FR 1471, Jan. 29, 1964.

§ 206.10 Mailing list.

Persons may be placed on the mailing list to receive copies of the General Orders issued by the Maritime Administration and/or the Maritime Subsidy Board, and National Shipping Authority orders (32A CFR Ch. XVIII), upon request, written or oral, to the Secretary, Maritime Administration, Washington, DC, 20590. The charge for this service is $10 per calendar year.

§ 206.11 Individual copies of orders.

Single copies of the orders referred to in § 206.310 may be obtained, upon request, written or oral, to the Secretary, Maritime Administration, Washington, DC, 20590, at a cost of 25 cents each.

Subpart C—Applications for Sale of Subsidized Vessel

§ 206.20 Charges for processing applications.

(a) Applications by owners for the sale of subsidized vessels to a private party where appraisal is made for the Maritime Administration by an independent vessel appraiser shall be filed with the Secretary, Maritime Subsidy Board, Washington, DC, 20590.

(b) *Fee.* Each such application shall be accompanied by the sum of $400, which sum will be retained to recover the cost of processing the application.

(Sec. 4, 5 U.S.C. 553)

[G.O. 105, 31 FR 3397, Mar. 4, 1966]

PART 207—STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL SUBSIDY APPLICATION HEARINGS

Sec.
207.1 Purpose.
207.2 Basic statistical data.
207.3 Procedures.

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

Source: 41 FR 50257, Nov. 15, 1976, unless otherwise noted.

§ 207.1 Purpose.

The purpose of this part is to identify the basic statistical data and reports required by the Maritime Subsidy Board (Board) in hearings held under section 605(c), Merchant Marine Act, 1936, as amended (Act), in regard to applications for operating-differential subsidy (ODS) under Title VI of the Act and to provide procedures for the production of these data and reports. Statistical data not expressly covered by this part are subject to Subpart A of Part 206 of this subchapter. There shall be no charge for the production of the basic statistical data and reports identified in this part.

§ 207.2 Basic statistical data.

(a) *Data and reports available.* The basic statistical data and reports that will be provided pursuant to § 207.3 of this part in regard to any hearing held by the Board under section 605(c) of the Act in connection with an application for ODS are as follows, with the accompanying "Notes" forming an integral part of each report:

19— CENSUS TRADE DATA [1] MSB DOCKET ——

Report 001 Page —— Date prepared ——

Trade route	Commodity	Commodity description	Inbound liner [2]							
			Tonnage			Percent United States	Value			Percent United States
			United States	Foreign	Total		United States	Foreign	Total	

Total trade route by inbound liner [3]

(For an explanation of terms and numbers see "Notes".)

19— CENSUS TRADE DATA [4] MSB DOCKET ——

Report 002 Page —— Date prepared ——

Trade route	Coastal district	Foreign country	Commodity	Commodity description	Inbound liner [2]							
					Tonnage			Percent United States	Value			Percent United States
					United States	Foreign	Total		United States	Foreign	Total	

Total trade route by coastal district by foreign country by inbound liner [5]
Total trade route by coastal district by inbound liner [6]
Total trade route by inbound liner [3]
(For an explanation of terms and numbers see "Notes".)

19— MARAD LINER FOREIGN TRADE DATA [7] MSB DOCKET ——

Report 003 Page —— Date prepared ——

Trade route	Coastal district	Foreign country	Flag	Inbound				Outbound			
				Tonnage				Tonnage			
				General	Bulk	Defense	Total	General	Bulk	Defense	Total

Total trade route by coastal district by foreign country [8]
Total trade route by coastal district [9]
Total trade route [10]
(For explanation of terms and numbers see "Notes.")

19— MARAD CONTAINERIZED FOREIGN TRADE DATA [11] MSB DOCKET ———

Report 004 Page ——— Date prepared ———

Trade route	Coastal district	Foreign country	Flag	Inbound					Outbound				
				Tonnage			Number containers	Cubic feet	Tonnage			Number containers	Cubic feet
				Commercial	Defense	Total			Commercial	Defense	Total		

Total by trade route by coastal district by foreign country [8]
Total by trade route by coastal district [9]
Total by trade route [10]
(For an explanation of terms and numbers see "Notes.")

19— MARAD SAILINGS FOREIGN TRADE DATA [12] MSB DOCKET ———

Report 005 Page ——— Date prepared ———

Trade route	Flag	Sailing [13]		
		Inbound	Outbound	Total

Total sailings by trade route [14]
Total sailings [15]

(For an explanation of terms and numbers see "Notes.")

NOTES

EXPLANATION OF TERMS

Trade Route—A two digit numerical code signifying a waterborne route between a specific U.S. coastal district(s) and foreign port range.

Commodity—A three digit numerical Statistical Classification of Commodities (SCC) code assigned by the Bureau of the Census to a major category of commodities.

Commodity Description—A literal definition of each three digit numerical (SCC) code.

Value Outbound—The dollar value of commodities at time and place of export. It is based on the selling price (or cost if not sold) and includes inland freight insurance, and other charges to the port of exportation.

Value Inbound—The market dollar value of commodities in the exporting foreign country, and therefore excludes U.S. import duties, freight charges from the foreign country to the United States and insurance.

Tonnage Inbound—The number of long tons (2,240 lbs.) of entries for immediate consumption and entries into customs bonded storage and manufacturing warehouses. Excludes American goods returned by U.S. military forces for their own use and imports arriving on vessels owned and operated by the Department of Defense.

Tonnage Outbound—The number of long tons (2,240 lbs.) of foreign merchandise, including nongovernment shipments, shipments to U.S. civilian government agencies, and government-financed economic assistance shipments under the Foreign Assistance Act. Excluded from the figures are shipments of supplies and equipment to U.S. military forces for their own use, shipments of DOD controlled cargo under foreign aid programs, and all shipments of Special Category commodities (commodities for which detailed information may not be released for security reasons).

Inbound—A vessel movement to the United States from a foreign country.

Outbound—A vessel movement to a foreign country from the United States.

Liner—Type of Service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific United States ports or range and designated foreign ports or range.

Non-Liner—Type of service offered by vessels, other than liner or tanker vessels, that are chartered or otherwise hired for the carriage of goods on special voyages. Sailing schedules are not predetermined or fixed.

Tanker—Type of Service offered by vessels, primarily designed for the carriage of bulk liquid cargoes, which are chartered or otherwise hired for special voyages.

Foreign Country—A three digit numerical code classification as defined by the Bureau of the Census' Schedule C, "Classification of Country Designations", dated January 1, 1972.

Flag—A two digit numerical code signifying the country in which a vessel is registered.

Coastal District—A one digit numerical code depicting a specific United States coastal area as follows:

1. North Atlantic—Maine to Virginia/North Carolina state line.
2. South Atlantic—Virginia/North Carolina state line to Key West, Florida.
3. Gulf—Key West, Florida, to the border of Mexico.
4. California—California.
5. Pacific Northwest — Washington and Oregon.
6. Great Lakes—All U.S. ports on the Great Lakes system.
7. Hawaii—All ports in the Hawaiian Islands.
8. Alaska—All ports in Alaska and the Aleutian Islands.
9. Puerto Rico—Puerto Rico and the Virgin Islands.

Bulk—Commodities customarily loaded and carried without wrappers or containers, and received and delivered without transportation mark or count whether such cargo is handled on berth terms, voyage charter, or any other basis.

General—Miscellaneous commodities packed in boxes, bags, bales, barrels, containers, crates, drums, unboxed or uncrated, accepted and delivered by mark and count.

Defense—Cargo transported for the U.S. Department of Defense, including the Military Sealift Command.

Commercial—Combination of general and bulk cargoes.

Containers—The number of containers represents the total of all containers transported regardless of size or TEU's.

Cubic Feet—The number of cubic feet represents the total cargo contained and transported within containers regardless of the interior cubic capacity of the containers.

EXPLANATION OF NUMBERS

[1] 19—— Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 42A.

[2] Inbound Liner—this heading indicates the type of data contained in the report; other headings for the report are:

Outbound Liner
Inbound Non-Liner
Outbound Non-Liner

Inbound Tanker
Outbound Tanker

[3] Total Trade Route By Inbound Liner—At the end of the data for each trade route a total is provided for the category; other categories for the report are:

Total Trade Route By Outbound Liner
Total Trade Route By Inbound Non-Liner
Total Trade Route By Outbound Non-Liner
Total Trade Route By Inbound Tanker
Total Trade Route By Outbound Tanker

[4] 19—— Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 44B.

[5] Total Trade Route By Coastal District By Inbound Liner—At the end of the data for each coastal district a total is provided for the category; other categories for the report are:

Total Trade Route By Coastal District By Outbound Liner
Total Trade Route By Coastal District By Inbound Non-Liner
Total Trade Route By Coastal District By Outbound Non-Liner
Total Trade Route By Coastal District By Inbound Tanker
Total Trade Route By Coastal District By Outbound Tanker

[6] Total Trade Route By Coastal District By Foreign Country By Inbound Liner—At the end of the data for each foreign country a total is provided for the category; other categories for the report are:

Total Trade Route By Coastal District By Foreign Country By Outbound Liner
Total Trade Route By Coastal District By Foreign Country By Inbound Non-Liner
Total Trade Route By Coastal District By Foreign Country By Outbound Non-Liner
Total Trade Route By coastal district By Foreign Country By Inbound Tanker
Total Trade Route By Coastal District By Foreign Country By Outbound Tanker

[7] 19—— MARAD Liner Foreign Trade Data—The data base for this report is the MARAD Foreign Trade System. This System contains liner information only and is collected from MA Forms 721/722.

[8] Total Trade Route By Coastal District By Foreign Country—A total is provided at the end of each foreign country.

[9] Total Trade Route By Coastal District—A total is provided at the end of each coastal district for all foreign contries.

[10] Total Trade Route—A total is provided at the end of each trade route for all coastal districts.

[11] 19—— MARAD Containerized Foreign Trade Data—The data base for this report is the MARAD Container System. This system contains information collected from MA Forms 578A for any vessel carrying ten or more containers.

[12] 19—— MARAD Sailings Foreign Trade Data—The data base for this report is the MARAD Foreign Trade System. This system contains liner information only and is collected from MA Forms 721/722.

[13] Sailings—The actual number of "Outbound" and "Inbound" sailings made by vessels of specific flags of registration on a specific trade route is provided. A sailing constitutes an initial entrance to or a final clearance from the United States of a vessel.

[14] Total Sailings By Trade Route—A total is provided at the end of each trade route.

[15] Total Sailings—A total is provided at the end for all trade routes.

(b) *Time frame of data and reports provided.* The basic statistical data and reports provided by this part will be for the most recent three full calendar years for which such data is available in final form on the date the Board issues its referral order for a hearing on any ODS application. No preliminary data and no data for parts of a calendar year will be provided under this part. Any request for preliminary data or data for any part of a calendar year should be made under Subpart A of Part 206 of this subchapter. Data requested for any calendar year more recent than the three years described in this paragraph should also be made under Subpart A of Part 206 of this subchapter.

(c) *Confidentiality.* The original sources of basic statistical data furnished under this part are "business confidential" and data shall not be supplied in such form as to permit competitors to extrapolate the data supplied by the original sources to the Maritime Administration and, thereby, determine the carryings of individual competitors. Appropriate written waivers of confidentiality from persons supplying data will be accepted and honored by the Maritime Administration to the extent practicable in the preparation of statistical data and reports under this part.

§ 207.3 Procedures.

(a) *Request.* The procedures for production of basic statistical data and reports under this part may be initiated only by the written request of a party to a hearing under section 605(c) of the Act in connection with an ODS application. The term "party" includes the applicant, Public Counsel, and any other person whose petition to intervene has been granted. The request shall identify the specific format of data sought according to the report numbers listed in § 207.2 of this part and shall state the trade routes or trade areas covered by the ODS application and identified by the Board in its section 605(c) notice as published in the FEDERAL REGISTER. The letter requesting data and reports should be addressed to the Chief, Division of Trade Studies and Statistics (Code M-522), Maritime Administration, U.S. Department of Transportation, Room 4075, 14th and E Streets NW., Washington, DC 20590. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing.

(b) *Determination of data and reports.* The Chief, division of Trade Studies and Statistics, shall review and define the basic statistical data and reports applicable to a party's request, with special attention to § 207.2(c) of this part, and promptly take all necessary steps to effect production. He shall expeditiously notify the requesting party, with a copy to all other parties and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket), as follows: the basic statistical data and reports being produced; and the schedule for distribution thereof to the parties and to the presiding Administrative Law Judge.

(c) *Transmission of data package.* Once the Chief, Division of Trade Studies and Statistics, has assembled the basic statistical data and reports, he shall promptly transmit them to:

(1) The requesting party (one copy);

(2) Public Counsel (one copy);

(3) Each other party (one copy each); and

(4) The presiding Administrative Law Judge (two copies: one copy of which shall be received into evidence in the hearing docket, pursuant to § 201.132(g) of this subchapter, and the other copy of which shall be for the personal use of the presiding Administrative Law Judge).

(d) *Dispute as to scope of data and reports.* If any party to the hearing disputes the scope of data and reports to be produced as defined in the notice issued by the Chief, Division of Trade Studies and Statistics, review by the Director, Office of Subsidy Administration, may be obtained by such party through filing of a written request for review with the Director, Office of Subsidy Administration. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing. On the basis of the request for review, and such comments as any other party to the hearing may have filed within ten (10) days of the date on the request, the Director, Office of Subsidy Administration, shall determine the proper scope of the basic statistical data and reports to be produced. The determination shall be final. A copy of the determination shall be furnished to each party and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket).

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

Subpart A—Introduction

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221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

221.11 Required approvals.
221.13 Transfer of control.
221.15 Unrestricted transfers.
221.17 General approval.
221.19 Prohibited transactions.
221.21 Requests for waiver of required documentation or approval of use.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

221.41 Purpose.
221.43 General approval of mortgages.
221.45 Permitted mortgages and trusts.
221.47 Approval of corporate citizen trustee.
221.49 Approval of noncorporate citizen trustee.
221.51 Approval of noncitizen trustee.
221.53 Application for approval as mortgagee or trustee.
221.55 Renewal of general approval as mortgagee or trustee.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

APPENDIX TO PART 221

AUTHORITY: Secs. 2, 9, 37, 41 and 43, Shipping Act, 1916, as amended, and Secs. 204(b) and 705, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 705, 802, 803, 808, 835, 839, 841a, 11149(b), 1195); 49 CFR 1.66.

SOURCE: 54 FR 5386, Feb. 2, 1989 (interim), unless otherwise noted.

Subpart A—Introduction

§ 221.1 Purpose.

This part implements statutory responsibilities of the Secretary of Transportation (the "Secretary") with respect to:

(a) Approval of mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States pursuant to 46 U.S.C. ch. 313, subch. II, contained in section 102 of Pub. L. 100–710, amending and codifying provisions of the former Ship Mortgage Act, 1920;

(b) The regulation of transactions involving transfers of vessels documented under the laws of the United States to noncitizens or to the registry or authority of foreign countries under 46 App. U.S.C. 808, as amended by section 104 of Pub. L. 100–710; and

(c) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

Those responsibilities have been delegated by the Secretary to the Maritime Administrator (49 CFR 1.66). Accordingly, statutory references to "the Secretary" have been modified herein to refer to the "Maritime Administrator," to reflect that delegation for regulatory purposes.

§ 221.3 Definitions.

For the purpose of this part:

(a) "Charter" means any agreement, contract, lease or commitment whereby possession, use, or services of a vessel are obtained. The term includes all bareboat, time and voyage charters as well as contracts of affreightment, space charters, drilling contracts and leases.

(b) "Citizen of the United States" means any person who qualifies as a citizen of the United States under 46 App. U.S.C. 802 (hereinafter defined), including receivers and trustees and successors or assignees of such persons pursuant to 46 App. U.S.C. 803.

(c) "Documented vessel" means a vessel documented under chapter 121, title 46, United States Code, including a vessel for which a registry has been issued pursuant to section 12105 of that title. A vessel shall be deemed to be documented until such time as surrender of the Certificate of Documentation or Certificate of Registry has been officially accepted by the United States Coast Guard.

(d) "Federally insured depository institution" means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such law to accept deposits from the public and whose deposit accounts are insured by any of the following agencies:

(1) Federal Deposit Insurance Corporation (FDIC);

(2) Federal Savings and Loan Insurance Corporation (FSLIC); and

(3) National Credit Union Administration (NCUA).

(e) "Fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(f) "Fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(g) "Fish tender vessel" means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing vessel, fish processing vessel, or fish tender vessel or a shoreside fish processing facility.

(h) "Mortgagee" means

(1) A State;

(2) The United States Government;

(3) A federally insured depository institution that has not been disapproved by the Maritime Administrator;

(4) An individual who is a citizen of the United States;

(5) Any other person who qualifies as a citizen of the United States; or

(6) Any other person approved by the Maritime Administrator to whom a documented vessel is mortgaged.

(i) "Noncitizen" means a person who is not a citizen of the United States within the meaning of paragraph (b) of this section.

(j) "Person" includes, in addition to individuals, corporations, partnerships, joint ventures and associations, existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(k) "Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802" means a person that, in both form and substance, satisfies the following requirements—

(1) An individual who is a citizen by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the controlling interest of which is owned by citizens of the United States and whose president or chief executive officer and chairman of the board of directors are each a citizen of the United States, the majority of a quorum of the board of directors is composed of citizens of the United States and the controlling interest of which is owned by citizens of the United States, but the interest owned by citizens of the United States shall be not less than 75 percent in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(3) A partnership organized under the laws of the United States or of a State, if all the general partners are citizens of the United States, a majority of the partnership interests are owned by citizens of the United States and if entitlement to a majority of the proceeds or benefits of the partnership accrue to citizens of the United States, but not less than 75 percent of the partnership interests must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(4) An association organized under the laws of the United States or of a

State, whose president or other chief executive officer and chairman of the board of directors (or equivalent committee or body) are citizens of the United States, the majority of a quorum of the board of directors, or equivalent, are citizens of the United States, and a majority of the members entitled to vote are citizens of the United States, but not less than 75 percent of the members entitled to vote shall be citizens if in the event of direct or indirect ownership of a vessel engaging in the coastwise trade; or

(5) A joint venture organized under the laws of the United States or of a State, if each coventurer is a citizen of the United States, but not less than a 75 percent interest in each coventurer must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade.

(l) "Pleasure vessel" means a vessel that has been issued a recreational vessel license pursuant to 46 U.S.C. 12109 and—

(1) Is operated by the owner only for pleasure; or

(2) Is bareboat chartered by or on behalf of the owner to another person and operated only for that person's pleasure, subject to compliance throughout the period of the charter with the requirement of 46 U.S.C. 12110(d) that a documented vessel may be placed under the command only of a citizen of the United States.

(m) "State" means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(n) "Trustee" means:

(1) A State;

(2) The United States Government;

(3) A citizen of the United States approved by the Maritime Administrator; or

(4) Any other person approved by the Maritime Administrator.

(o) "United States," when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(p) The term "United States Government" means the Federal government acting by and through any of its departments or agencies.

§ 221.5 Citizenship declarations.

(a) When an instrument transferring an interest in a documented vessel is presented to the United States Government for filing or recording, the person filing shall submit therewith a written declaration on Maritime Administration Form No. MA-899 (available from the Coast Guard Documentation Officer at the home port of the vessel or from the Vessel Transfer and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590), that the transferee is a citizen of the United States, is an authorized mortgagee or trustee under 46 U.S.C. 31322 or 31328 or is exempt from the approval requirement of section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808) in accordance with § 221.15(b)(1) or § 221.17(a) of this part.

(b) A declaration filed by any person other than an individual shall be signed by its president, secretary, treasurer, or other official authorized by the entity to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever approval of the Maritime Administrator is required under § 221.11 of this part, or pursuant to a Maritime Administration contract or Transfer Order, an application on Maritime Administration Form MA-29 or MA-29B giving full particulars of the proposed transaction shall be filed with the Vessel Transfer and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(b) *Fees.* Applications for approval of any of the following transactions shall be accompanied by the specified fee.

(1) Transactions requiring approval under § 221.11:

(i) Sale and delivery to a noncitizen, or transfer to foreign registry of, or foreign governmental authority over, a documented vessel, per vessel—

(A) Of 3,000 gross tons and	$325.
(B) Of less than 3,000 gross tons	$170.
(ii) Mortgage, or transfer of any interest in, or control of, a documented vessel to a noncitizen, per vessel	$250.
(iii) Charter of a documented vessel to a noncitizen, per vessel	$250.
(iv) Sale or transfer of stock in a corporation that is a citizen of the United States and owns any documented vessel, if by such sale or transfer the controlling interest or a majority of the voting power of the corporation is vested in, or for the benefit of, any noncitizen	$325.
(v) An application for approval to act as mortgagee or trustee for an indebtedness secured by a preferred mortgage on a documented vessel, and all required annual renewal applications	$215.

(2) Transactions requiring approval pursuant to a Maritime Administration contract:

(i) Transfer of ownership or registry, or, both, of a contract vessel, per vessel	$260.
(ii) Sale or transfer to a noncitizen of stock in the foreign corporate owner of the contract vessel	$235.
(iii) Charter of a contract vessel to a noncitizen, per vessel	$240.
(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel	$400.

(c) *Modification of applications or prior approvals.* An application for modification of any approval sought, or of an outstanding Maritime Administration contract or Transfer Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or Waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section to conform the fee charged more closely with administrative costs, or may waive the fee entirely in extenuating circumstances where the best interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

§ 221.11 Required approvals.

(a) Except as provided in §§ 221.15(b)(1) and 221.17(a) of this part, a person may not, without the written approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer to a noncitizen, any interest in or control of a documented vessel owned by a citizen of the United States; or

(2) Place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

(b) For purposes of this part, operation of a documented vessel "under the authority of a foreign country" means any agreement, undertaking or device by which a documented vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability or uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

§ 221.13 Transfer of control.

(a) *Criteria.* (1) A conclusive presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner of the vessel ceases to be a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, as defined for purposes of these regulations.

(2) A rebuttable presumption that a transfer of control of a documented vessel has taken, or will take, place

will arise if the legal or beneficial owner is a citizen of the United States and:

(i) Through any means or device whatsoever a noncitizen acquires the ability, present or prospective, to control in any manner the business decisions of the owner affecting the vessel; or

(ii) There is an acquisition of control, as defined by the United States Government, of the vessel owner by, or imputed to, a noncitizen.

(3) For purposes of this section, transfer of control to, or acquisition of control by, a noncitizen includes any noncitizen parent or other person that directly or indirectly controls the transferee or the acquiring person.

(b) *Voting interest.* In determining whether a transfer of control of the owner of a documented vessel has taken or will take place, consideration will usually be limited to voting interests or their equivalent. Non-voting interests, including *bona fide* limited partnership interests, are generally excluded. However, for convertible instruments, the following guidelines will be followed in determining whether a voting interest exists:

(1) Instruments that may be converted solely at the option of the holder (*e.g.*, debentures or preferred stock convertible to common shares) are deemed voting instruments from the date of acquisition;

(2) Instruments that specify a date or condition(s) for convertibility are deemed voting instruments from the release date; and

(3) Instruments that are convertible solely at the option of or with concurrence by the issuer are deemed voting instruments from the date convertibility is authorized.

§ 221.15 Unrestricted transfers.

(a) None of the transactions specified in § 221.11(a)(1) of this part shall require approval if the owner of a documented vessel is not a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, and that owner is not otherwise required to obtain approval pursuant to a Maritime Administration contract.

(b) None of the transactions specified in § 221.11(a)(1) of this part shall require approval of the Maritime Administrator if the vessel has been operated exclusively and with *bona fides*, for one or more of the following uses, under the appropriate license or endorsed registry and no other, since initial documentation following construction or transfer from foreign registry; or if converted to such use from a prior use, has been exclusively so operated for a period of not less than twelve (12) consecutive months prior to the date of transfer:

(1) A fishing vessel;

(2) A fish processing vessel;

(3) A fish tender vessel; or

(4) A pleasure vessel.

(c) Entitlement to either of the exemptions specified in this section shall be established by filing Maritime Administration Form MA-899 with the Coast Guard at the time of surrender of the Certificate of Documentation or of Registry, stating with particularity compliance with the grounds for exemption.

§ 221.17 General approval.

(a) *All transactions.* Except when the transferee of a vessel or an interest in or control of a vessel is a corporation holding a Certificate of Compliance issued under 46 App. U.S.C. 883-1, and except as provided in paragraph (c) of this section, the Maritime Administrator grants prior approval for each of the transactions described in § 221.11(a)(1) of this part for the following documented vessel types:

(1) A self-propelled vessel under 1,000 gross tons;

(2) A vessel operating on inland lakes or waters from which there is no navigable exit; and

(3) A non-self-propelled vessel under 1,000 tons, excluding LASH and SEABEE type barges.

(b) *Mortgages.* The Maritime Administrator grants general approval for the following mortgages of documented vessels to noncitizens:

(1) A mortgage to a noncitizen federally insured depository institution that has complied with the requirements of § 221.45(a) of this part; and

(2) A mortgage to any noncitizen of a vessel specified in § 221.17(a) of this part.

(c) *Charters.* The Maritime Administrator approves, subject to the conditions specified below, charters of documented vessels by citizens of the United States to noncitizens, not to exceed six months. An information copy of each such charter shall be submitted to the Maritime Administrator not later than thirty days following the execution thereof. The respective dates for commencement and termination of a charter, as set forth in its provisions, shall be accepted as *prima facie* evidence of the dates of the events. The Maritime Administrator shall consider the charter period to include any extension period, irrespective of the inclusion of a provision in the agreement that either makes any charter period extension beyond six (6) months subject to the approval of the Maritime Administrator or permits the substitution of another vessel, including other than a documented vessel. For such a charter, the vessel owner shall submit the charter party to the Maritime Administrator for approval prior to the commencement date of the first six (6) month period. Any new charter of a vessel to a noncitizen that is executed within thirty (30) days after the date of any charter approved under this paragraph with the same noncitizen charterer, shall be considered to be a renewal or extension of the original charter. If the cumulative period of time of the charters exceeds six (6) months, the new charter shall be submitted for approval. This requirement shall apply notwithstanding any provision in a new charter that permits the substitution of another vessel, including other than a documented vessel. This approval excludes and does not apply to the following charters:

(1) Demise or bareboat charters for operation in the coastwise trade;

(2) Charters to a noncitizen providing for a duration that is or may be for a period in excess of six (6) months, other than the charter of vessel types described in paragraph (a) of this section.

(3) Charters for the carriage of cargoes of any kind to or from the USSR (except as provided in paragraph (d) of this section), Latvia, Lithuania, Estonia, Libya, Iran, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, Manchuria or Cuba;[1] and

(d) *Charters for trade with the USSR.* The Maritime Administrator hereby approves charters to noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the USSR, or to other permissible ports of discharge for transshipment to the USSR, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of Parts 252 and 294 of this chapter.

(e) *Transfer to foreign registry or operation under the authority of a foreign country.* The Maritime Administrator grants prior approval for the transactions described in § 221.11(a)(2) of this part for documented vessels of under 200 gross tons. This approval shall not apply if the vessel is to be placed under the registry of or operated under the authority of any country listed in paragraph (c)(2) of this section.

[54 FR 8195, Feb. 27, 1989]

§ 221.19 Prohibited transactions.

(a) Transactions that are otherwise unrestricted or approved under § 221.15 and 221.17 (a) through (c) of this part are prohibited if the transferee or a person with a controlling interest in the transferee is a citizen or operates under the laws of any country identified in § 221.17(c)(2) of this part, unless:

(1) Such transferee is an individual who has been lawfully admitted into, and resides in the United States, and expressly undertakes under surety bond, in an amount and form and substance satisfactory to the Maritime Administrator, not to cause or allow removal of the vessel from the territorial limits of the United States, or

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[1] This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the official identified in § 221.7 of this part.

(2) Such transferee is a citizen of the USSR, but only for the purposes of § 221.17(d) of this part.

(b) No approval shall be granted if the vessel is to be transferred to or placed under the registry, or operated under the authority, of any such country.

§ 221.21 Requests for waiver of required documentation or approval of use.

(a) A documented vessel may be sold by order of a district court only to a person eligible to own a documented vessel or to a mortgagee of the vessel and, unless waived by the Maritime Administrator, a person purchasing the vessel pursuant to court order or from an intervening noncitizen mortgagee-purchaser must document the vessel under chapter 121 of Title 46, United States Code, unless that requirement is waived by the Maritime Administrator.

(b)(1) A purchaser wishing to obtain such a waiver of that documentation requirement must submit a written application to the official identified in § 221.7(a) of this part.

(2) The application must identify the present and former name(s) and Official Number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

(c) A mortgagee not eligible to document a vessel shall not operate, or cause to be operated, in commerce a vessel purchased by order of a district court unless approved by the Maritime Administrator. An application for such approval shall be submitted in the manner prescribed in paragraph (b)(2).

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

§ 221.41 Purpose.

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving mortgagees and trustees of preferred mortgages on documented vessels pursuant to Pub. L. 100-710.

§ 221.43 General approval of mortgagees.

(a)(1) The Maritime Administrator will approve as a preferred mortgagee of documented vessels a federally insured depository institution that is a noncitizen if it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(i) Is organized and doing business in and under the laws of the United States or of a State;

(ii) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(iii) Is federally insured by an agency identified in § 221.03(c) of this part and is subject to examination by an official of the United States Government.

(2) The Maritime Administrator hereby disapproves any federally insured depository institution as a preferred mortgagee that is a noncitizen unless and until it shall have complied fully with the requirements of paragraph (a)(1).

(b)(1) Except as provided below in paragraph (b)(2), the Maritime Administrator grants approval for persons who do not meet the requirements of 46 U.S.C. 31322(a)(1)(D)(i)-(v) to be mortgagees of preferred mortgages on the types of documented vessels identified in §§ 221.15(b) and 221.17(a) of this part.

(2) To qualify for this approval, at the time the mortgage is executed and at all times thereafter, the mortgage on such vessels shall contain no provisions allowing persons, including the mortgagee, who are not citizens of the United States: (i) To operate the vessel without the consent of the Maritime Administrator; (ii) exercise control over the vessel owner; (iii) exercise control over any charterer of the vessel; or (iv) exercise control over the management of the vessel. The term "control" as used herein means the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

(c) The approvals granted in this section shall not apply if the mortg gee is a person who is a citizen, or whose parent is organized and existing under the laws, or who is subject, directly or indirectly to control, of any country identified in § 221.17(c)(2) of this part.

§ 221.45 Permitted mortgages and trusts.

(a) An instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued to the United States Government or to a State acting in the capacity of mortgagee or of trustee for the benefit of a person not qualifying as a citizen of the United States. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other persons, an instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued, assigned, transferred to, or held in trust by a trustee for the benefit of a person not qualifying as a citizen of the United States under 46 App. U.S.C. 802 only if the mortgagee or trustee has been approved by the Maritime Administrator under this part, in which event no further application to, approval by or notice to the Maritime Administrator is required for a particular transaction.

(c) If an approved mortgagee or trustee at any time shall no longer qualify to serve in such capacity under this part:

(1) The mortgagee or trustee shall notify immediately the official identified in § 221.7 of this part;

(2) The Maritime Administrator shall issue a disapproval notice and order and promptly serve the vessel owner with a copy; and

(3) The vessel owner shall promptly nominate a successor mortgagee or trustee to assume the mortgage or trust, which assumption shall be effected within thirty days receipt of the notice given pursuant to paragraph (c)(2) subject to approval of the Maritime Administrator.

§ 221.47 Approval of corporate citizen trustee.

A corporate trustee shall be approved under 47 U.S.C. 31328(b) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision of examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000.

§ 221.49 Appoval of noncorporate citizen trustee.

A noncorporate trustee may be approved under 46 U.S.C. 31328(a)(4) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is otherwise organized and doing business under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus or the equivalent (as stated in its most recently published report of condition) of at least $3,000,000.

§ 221.51 Approval of noncitizen trustee.

(a) No federally insured depository institution that is not a citizen of the United States may serve as a trustee unless it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(1) Is organized under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise trust powers;

(3) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(4) Is federally insured and is subject to examination by an official of the United States Government.

(b) Pursuant to 46 U.S.C. 31328 (a)(4) and (b)(5), a noncitizen federally insured depository institution that complies with the requirements of paragraph (a) of this section may act as a trustee without specific transactional approval of the Maritime Administrator.

(c) There are no restrictions on who may serve as a mortgagee of preferred mortgages on documented vessels that meet the criteria of §§ 221.15(b) or 221.17(a) of this part. Accordingly, any noncitizen is hereby approved as a trustee of such mortgages.

(d) Except as provided in paragraph (c) of this section, all other noncitizens, including a federally insured depository institution that has not complied with the filing requirement of paragraph (a) of this section, are hereby disapproved as trustees, subject to consideration on a case-by-case basis upon application for approval on Maritime Administration Form MA-29.

§ 221.53 Application for approval as mortgagee or trustee.

(a) Each applicant for specific approval as a mortgagee in a particular transaction shall submit a completed Maritime Administration Form MA-29 to the official identified in § 221.7 of this part. Each applicant for general approval as a mortgagee or as a trustee shall submit a completed Maritime Administration Form MA-579 to that official.

(b) Each approval of an application to be an approved mortgagee or trustee shall be in writing and an original copy shall be provided by the Maritime Administrator to the approved mortgagee or trustee.

(c) Each general approval of a mortgagee or trustee shall be effective for a period of one (1) year from the date of issuance, subject to renewal for additional annual periods upon satisfaction of the provisions of § 221.55.

(d) A list of generally approved mortgagees and trustees will be published from time to time in the Federal Register.

§ 221.55 Renewal of general approval of mortgagee or trustee.

(a) Upon filing of a complete and acceptable Maritime Administration Form MA-580, approval of a general mortgagee or trustee continuing to meet the requirements of this subpart will be extended for an additional period of one (1) year.

(b) The form shall be submitted to the official identified in § 221.7 of this part, not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the one (1) year period then in effect.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

§ 221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

(a) On July 16, 1956, the United States Department of Commerce through the Maritime Administration approved and authorized publication of a standard form of bareboat charter for use in the chartering, under section 705 of the Merchant Marine Act, 1936, as amended, of Government-owned dry-cargo vessels, which are subject to Title VII of said act. The chartering of such vessels is subject to competitive bidding procedures as prescribed under section 706 of said act.

(b) Except as otherwise authorized the form of such charter shall be substantially as follows:

Form No. 705 (7-56).... Contract No. ________

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MARITIME ADMINISTRATION—BAREBOAT CHARTER AGREEMENT

This Charter Party Agreement (hereinafter called the "Agreement") dated as of ________, 19___, between the United States of America, acting by and through the Department of Transportation (Maritime Administration) (hereinafter called the "Owner") and ________ (hereinafter called the "Charterer"), whose address is ________. Witnesseth:

Whereas:

1. The Owner, acting pursuant to authority vested in it by the Merchant Marine Act, 1936, as amended (herein referred to as the "Act"), and particularly Title VII thereof, issued under date of ________, 19___, its Invitation for Sealed Bids for the bareboat charter of certain Vessel(s)[1] for operation in a service determined to be essential, as provided by section 221 of the Act.

2. Bids received pursuant to such Invitation were opened on ________,

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[1] The term "Vessels" as used in the plural in either Part I or Part II of this Agreement also refers to any single Vessel, whenever appropriate, and similarly the term "Vessel" as used in the singular refers to all Vessels within the Agreement whenever appropriate.

19____, and the Charterer stated in its bid for the charter of said Vessel(s) that such Vessel(s) would be operated in the service hereinafter described, which has heretofore been determined to be essential, as provided in Section 211 of the Act, and established to the satisfaction of the owner its qualifications as a bidder (including the sufficiency of its capital, credit, and experience), and its compliance with the terms and conditions for the award of a charter of said Vessel(s) as set forth in said Invitation.

3. The Owner accepted the bid of the Charterer for the bareboat charter of said Vessel(s) for operation in the service described in said bid, and awarded a charter to the Charterer for the period and upon the terms and conditions herfeinafter set forth.

Now therefore, in consideration of the premises, the parties hereto agree as follows:

PART I

Clause A. *Uniform terms.* This Agreement consists of two parts, this Part I and Part II. Unless otherwise in this Part I expressly provided, all of the provisions of said Part II shall be part of this Agreement as though fully set forth in this Part I. In the event of a conflict between the provisions of Parts I and II, the provisions of Part I shall govern to the extent of such conflict.

Clause B. *Agreement of the parties.* The Owner hereby agrees to let and the Charterer agrees to hire, the ________ for the carriage of lawful merchandise and passengers during the period and upon the terms and conditions hereinafter set forth.

Clause C. *Period of charter.* Subject to termination as provided in this Clause and in Section F, Part II, hereof, the period of this Agreement shall be as follows:

Provided, That whenever the President shall proclaim that the security of the national defense makes its advisable, or during any national emergency declared by proclamation of the President, or after a declaration of war or of national emergency made by the Congress, the Owner may terminate this Agreement without cost to the United States, upon such notice to the Charterer as the President or Congress shall determine.

Clause D. *Place and date of delivery.* The Vessel shall be delivered by the Owner to the Charterer at a safe berth in the port or place, hereinafter designated, on or about the delivery date tentatively scheduled.

Vessel name	Place of delivery	Estimated delivery date

Clause E. *Service.* The Charterer shall maintain and operate the Vessel in service or services on the following described trade route and not otherwise:

Clause F. *Rate of basic charter hire.* Basic charter hire at the rate of $__________per calendar month for each Vessel or prorata of any portion thereof, shall be paid by the Charterer to the Owner in accordance with Clause I, Part II of this Agreement.

Clause G. *Amount of insurance.* The Charterer shall at all times during the period of the Vessel's use under this Agreement carry and maintain on each Vessel policies of insurance in the manner and form prescribed in Clause 25, Part II, in the minimum amounts as follows:

Marine hull and machinery.	$..............................	
War risk hull and machinery.	$..............................	
Marine P & I....	$..............................	per GRT
War risk P & I.	$..............................	per GRT
Marine excess, general average, salvage, and collision liability.	$..............................	
War risk excess, general average, salvage, and collision liability.	$..............................	

together with such additional amounts of P & I and excess liability insurance as the owner may require from time to time.

The insertion of the amount of Marine and War Risk Hull and Machinery insurance shall be for the purpose of (a) fixing the minimum amount for the placing of insurance as prescribed in Clause 25, Part II, and (b) constituting the replacement or total loss value of the Vessel as between the Charterer and the Owner, but for no other purpose. The Charterer shall also at all times during the period of the Vessel's use under this Agreement carry and maintain such crew insurance as is required by the Charterer's current bargaining agreements.

Clause H. *Amount of bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond in the amount of $___________ for each Vessel, in the manner prescribed in Clause 3, Part II of this Agreement.

Clause I. *Special provisions.*

In witness whereof, this Agreement has been executed in triplicate by the Owner on the _______ day of _________, ____ and by the Charterer on the ____ day of ___________, 19____.

UNITED STATES OF AMERICA,
DEPARTMENT OF TRANSPORTATION
(Maritime Administration)
By: ______________________________
(CORPORATE SEAL)

____
Attest:
By: ______________________________
Secretary ___________________________

PART II—GENERAL PROVISIONS

A. Charter hire and bond

Clause 1. *Basic charter hire.* The Charterer shall pay the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessel until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of such loss, if known, or if the time of loss be uncertain, then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D.C., on delivery of each Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance of the first day of each month.

Clause 2. *Additional charter hire.* (a) if, at the end of the calendar year in which this agreement becomes effective, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessel(s)) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s) (all as herein after defined), the Charterer shall pay over to the Owner at Washington, DC., within thirty (30) days after the end of such year or other period, as additonal charter hire for such year or other period, an amount equal to one-half of such cumulative net voyage profit in excess of 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s). Such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period.

For purposes of calculating "cumulative net voyage profit" it is agreed by the parties that at the end of each accounting period any net voyage losses and/or any unearned portion of the aforesaid allowable return of 10% per annum on capital necessarily employed, may be carried forward into the next accounting period, but that in no event shall profits in excess of 10% per annum on capital employed, at the end of any accounting period, be carried forward into the next accounting period; such profits being subject to distribution at the end of each accounting period as herein provided.

(b) The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire at such time and in such manner and amounts as may be required by the Owner; provided, however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

Clause 3. *Bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond with sufficient surety, in the amount specified in Part I hereof, such bond to be approved by the Owner, both as to form and sufficiency of the sureties, and to be conditioned upon the true and faithful performance of all and singular the covenants and agreements of the Charterer contained in this Agreement, including, but not limited to, the Charterer's obligation to pay charter hire and damages and to indemnify against liens. The Charterer may, in lieu of furnishing such bond, pledge United States Government securities in the par value of the required amount under an agreement satisfactory in form and substance to the Owner.

B. Condition of Vessel(s) Equipment and Stores

Clause 4. *Condition of vessel(s) on delivery.* Each Vessel on delivery shall be in Class A-1 American Bureau of Shipping or equivalent, with all required certificates, including but not limited to marine inspection certificates of the Coast Guard, Treasury Department, and so far as due diligence can make her so, tight, staunch, strong and well and sufficiently tackled, appareled, furnished and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service.

Clause 5. *Surveys.* (a) Each Vessel shall be jointly surveyed before delivery and before redelivery under this Agreement to determine and state the condition of the Vessel. Such surveys shall include drydocking to determine and state the condition of the underwater parts, unless, at Owner's option, the drydocking in connection with delivery is postponed, in which event the cost and time (including Vessel expenses) of any damage to underwater parts found either upon delivery or during the period of the Vessel's use under this Agreement shall be for Owner's account unless such damage is established, from the basis of all evidence, to have occurred during the period of the Vessel's use under this Agreement. The cost and time of such delivery survey shall be for account of the Owner, and similarly the cost and time of such redelivery survey shall be for the account of the Charterer. Each party shall bear the cost of surveyors appointed by it in connection with both delivery and redelivery surveys.

(b) Except as to items sighted prior to delivery and noted on the delivery survey report as defective, which shall be for the Owner's account, including cost and time (inclusive of Vessel expenses) the delivery of each Vessel by the Owner and the acceptance thereof by the Charterer shall constitute full performance by the Owner of all the Owner's obligations under this Clause with respect to such Vessel, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any agreements, representations or warranties, expressed or implied with respect to the condition of such Vessel; provided, however, that the Owner shall nevertheless be responsible for the cost and time (exclusive of Vessel expenses) of repairs or renewals occasioned by latent defects in such Vessel, her machinery or appurtenances or defects due to locked-in stresses in such Vessel existing at the time of delivery, not recoverable under the terms and conditions of the American Hull form of policy (American Institute Time (Hulls) December, 1955) containing no deductible average clause.

Clause 6. *Determination of class.* For the purpose of this Agreement a Vessel chartered hereunder shall be deemed to be in class, whether or not any requirements or recommendations of the Classification Society are outstanding at the time of delivery or redelivery, as the case may be, unless the time limit for the accomplishment of any such requirements or recommendations, including any extension or period of grace allowed, shall have expired.

Clause 7. *Inventory.* A complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances, spare and replacement parts and of all unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be jointly taken and mutually agreed upon as to items and quantities, at the time of delivery, by representatives of the Charterer and the Owner. The parties may agree, however, to accept any suitable prior inventory which may have been taken before the delivery of the Vessel under this Agreement. Such delivery inventory of consumable and subsistence stores, slop chest, containers, and bunker fuel shall be priced by the Charterer at the current market price prevailing at the port and time of delivery. At redelivery a complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances and spare and replacement parts shall, also, be jointly taken and mutually agreed upon as to items and quantities by representatives of the Charterer and the Owner. In addition, a complete inventory of all broached and unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be taken by the Charterer immediately prior to the redelivery. Such inventory shall be priced by the Charterer at the current market price prevailing at the port and time of performance of Charterer's redelivery obligations, and the Owner shall be furnished with three certified copies of such inventory, together with an affidavit certifying as to its correctness.

Clause 8. *Consumable stores and fuel.* The Charterer shall accept and pay for any unbroached consumable stores, subsistence stores, slop chest, returnable containers, and bunker fuel furnished by the Owner or on board at the time of delivery at the market prices current at the time and place of repairs and outfitting. The Owner shall have no obligation upon redelivery to accept or pay for consumable stores (either broached or unbroached), subsistence stores, slop chest, or returnable containers, and shall accept and pay for bunker fuel only in such minimum amounts as the Owner may determine. (Bunkers accepted by the Owner shall be paid for at the current market price prevailing at the port and time of redelivery, or, in event of redelivery at a Reserve Fleet site, at the current market price at the port and time of redelivery repairs.) Prior to redelivery, such items shall be removed from the Vessels by the Charterer in accordance with the provisions of NSA Order No. 64, as revised from time to time, and the fair and reasonable cost of such removal shall be charged in the Vessel's voyage accounts for the last voyage prior to redelivery. With respect to the aforesaid items, there shall be taken into account in the determination of additional charter hire, in accordance with Clause 2, Part II, of this Agreement, (a) the current market value thereof at the port and time of redelivery, in the event redelivery is effected at a redelivery port, or, in the event redelivery is effected at a Reserve Fleet site, the current market value at the port and time of redelivery repairs, or (b) the net proceeds from the disposition thereof, in the event the Charterer elects to dispose of the removed goods and notifies the Owner of such intention prior to redelivery. The manner of, time of and determination of net proceeds from such disposition of the items shall be subject to approval of the Owner.

Clause 9. *Use of equipment.* The Charterer shall have the use of all outfit, equipment, furniture, furnishings, appliances, spare and replacement parts on board the Vessel at the time of delivery under this Agreement without extra cost and the same shall be returned to the Owner upon redelivery in good order and condition. Any such items damaged or so worn in service as to be unfit for use or lost or destroyed shall be replaced or made good by the Charterer in kind at or before redelivery, or at Owner's option, the Charterer shall pay for said items at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of delivery. The Owner shall have a right, but not an obligation, to accept any overages on the Vessel at redelivery. Any overages accepted by the Owner shall be paid for at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of redelivery. Overage and shortage statements shall be prepared and priced by the Charterer, subject to review and adjustment by the Owner.

Clause 10. *Maintenance.* The Charterer, except as otherwise provided in Clause 4, shall, at its own expense, maintain each Vessel, her machinery, boilers, appurtenances, and spare parts during the period of the Vessel's use under this Agreement in good state of repair and in efficient operating condition and in accordance with good commercial maintenance practices and shall keep each Vessel in such condition as will entitle the Owner at all times to all required Certificates, including, without limitation, the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping and with unexpired marine inspection certificates of the Coast Guard, Treasury Department.

Clause 11. *Structural changes.* The Charterer shall make no structural changes in the Vessel(s) and shall make no changes in the machinery, boilers, appurtenances or spare parts thereof, without in each instance first securing the written approval of the Owner.

Clause 12. *Drydocking.* The Charterer shall drydock each Vessel and clean and paint the underwater parts, when necessary, but not less than once in about every nine (9) months from date of delivery. The Charterer shall give the Owner reasonable notice of the time and place of drydocking and if practicable fifteen (15) days in advance thereof and afford the Owner an opportunity to inspect the Vessel(s) while drydocked. The Charterer shall also promptly notify the Owner sufficiently in advance to enable its respresentative to be present at repairs or surveys of the Vessel(s), and shall furnish the Owner with copies of reports made pursuant to such surveys.

Clause 13. *Inspections.* The Owner shall have the right at any time, without notice, to inspect or survey the Vessels at its own expense, to ascertain their condition and to satisfy itself that the Vessels are being properly repaired and maintained in accordance with good commercial maintenance practices, but such inspections shall be held at such time and in such manner as to not interfere with Vessels' schedule. The Charterer shall make all such repairs, at its own expense, as such inspection or survey may show to be required in compliance with the Charterer's obligations under this Agreement. The Charterer shall also permit the Owner to inspect the Vessels' logs whenever requested, and shall furnish the Owner upon request with full information regarding any casualties or other accidents or damage to the Vessels.

Clause 14. *Redelivery of vessel(s).* (a) *Port or place of redelivery.* The port of redelivery shall be the port of delivery or such other port as may be mutually agreed, *Provided,* that the Owner shall have the option of requiring the Charterer to place the Vessel(s) in layup at a Reserve Fleet site designated by the Owner, on the same coast as the port of redelivery, in the manner and on the basis provided for in subparagraph (d) of this Clause. In the event the Owner exercises this option, the Owner shall have the right to designate the port at which Charterer's redelivery obligations under this Clause will be performed.

(b) *Redelivery conditions.* Each Vessel, unless lost, shall be redelivered to the Owner, pursuant to the terms of this Agreement, in the same good order and condition as that in which she was delivered, unless the lack of good order and condition is due solely to ordinary wear and tear, and with valid classification and Coast Guard certificates, whether or not classification or Coast Guard repairs are due wholly or in part to ordinary wear and tear. At the redelivery survey provided for in Clause 6, surveyors appointed by the Charterer and surveyors appointed by the Owner, shall be present, who shall determine and state the repairs or work necessary to place each Vessel on the date of redelivery in the condition and class required under this Clause, which findings shall include all repairs and work required to be performed at the time of redelivery by the Classification Society and all other regulatory bodies, and all repairs and work which are necessary to place each Vessel on the date of redelivery in the good order and condition required by this Clause. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and time, or at Owner's option, the Charterer shall, on Owner's request, discharge such obligation by payment to the Owner of an amount sufficient to place each Vessel in such class, order and condition and to provide for the foregoing work and repairs at the prices current at the time of redelivery, which amount shall also include compensation at the rate of basic hire payable under this Agreement for the time reasonably required under then existing conditions to complete such work or repairs and compensation for all other expenses (including insurance), reasonably required incident to such work or repairs. In the event the Owner exercises this option, the Charterer's redelivery repair obligations shall be limited to the amount of Marine Hull and Machinery insurance required by the provisions of Part I hereof. The Charterer shall not be required to make any repairs which were for Owner's account under Clause 4 of this Agreement, but if such repairs were made after delivery under this Agreement and paid for by the Owner, they shall be considered as having been made at the time of delivery for the purpose of determining the Charterer's obligations under this Clause 14.

(c) *Disputes.* Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals, replacements, or condition of the Vessel(s), at the time of redelivery, the Charterer shall, without prejudice to its contentions, make and pay for such disputed repairs, renewals, or replacements, or any part thereof, before redelivery, and may recover the cost from the Owner, together with Vessel expenses and charter hire during the period required for the performance of such work over and above the time required to perform the Charterer's redelivery repairs, in event Owner's liability therefor is established.

(d) *Vessel layup.* In the event that the Owner exercises its option under subparagraph (a) of this Clause to require the Charterer to place the Vessel(s) in layup following completion of Charterer's normal redelivery obligations, the Charterer shall perform and pay for all work required in connection with the preparation for layup and movement of the Vessel(s) to the Reserve Fleet site designated by the Owner, as prescribed in NSA Order No. 64, as revised from time to time. In such event, (i) basic charter hire shall cease as of completion of Charterer's normal redelivery obligations, and (ii) all reasonable costs incurred by the Charterer during the period of the stripping and layup of the Vessel(s) as aforesaid, including but without limitation, cost of insurance, shall, to the extent authorized and approved by the Owner, be taken into account as voyage expense in the determination of additional charter hire under Clause 2.

C. Operation of the Vessel(s)

Clause 15. *Charterer to man, etc.* During the period of this Agreement, the Charterer shall, at its own expense, and by its own procurement, man, victual, navigate, operate, supply, fuel and, except as otherwise expressly provided in Clause 4 of this Agreement, repair each Vessel and pay all charges and expenses of every kind and nature whatsoever incident to the use and operation of the Vessel(s) under this Agreement. The Owner reserves the right to require the removal of the Master(s) or the Chief Engineer(s) if it shall have reason to be dissatisfied with their conduct or if it considers their employment to be prejudicial to the interests of the United States. Except as otherwise expressly provided in this Clause and Clause 40 of this Agreement, the Charterer and not the Owner shall have exclusive possession, control and command of the Vessel(s) during the entire period of use under this Agreement.

Clause 16. *Owner's representatives.* The Charterer agrees that, at its expense, it will furnish transportation on each Vessel, during the period of this Agreement, for not more than five officers and/or employees of the Federal Maritime Board—Maritime Administration, travelling on official business, who shall be given full, free and complete access at all reasonable times to all parts of such Vessel, and shall have full opportunity to observe and inspect the working of such Vessel in all of its parts, but without any directing or controlling power over such Vessel's operations. The Charterer also agrees to cooperate with such representatives in the making of any inspection or investigation which the Owner may deem desirable and to prepare and furnish full and complete reports, records or other data pertaining to such Vessel's operation, as requested by the Owner. It is mutually understood and agreed that the transportation of such Owner's representatives, shall be on the basis of not more than one round-trip per calendar year per Vessel, upon the written request of the Maritime Administrator.

Clause 17. *Employment of affiliates, etc., rental of office space.* (a) Unless granted an exemption upon such terms and conditions and for such specific period of time as the Owner shall determine pursuant to Section 803 of the Act, the Charterer shall not employ any person or concern performing or supplying stevedoring, ship-repairs, ship-chandler, towboat, or kindred services to supply such services to the chartered Vessel(s) if the Charterer or any subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any officer, director, or employee of the Charterer, such subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary company, holding company, affiliate company, or associate company of the Charterer owns any pecuniary interest, directly or indirectly, in the person or concern supplying such services to the chartered Vessel, or receives any payment or other things of value, directly or indirectly, as a result of such employment of services.

(b) Without prior approval of the Owner granted upon such terms and conditions as the Owner may prescribe, the Charterer shall not rent office space owned by the Charterer or by any subsidiary, holding company, affiliate or associate company of the Charterer, or by any officer, director, or employee of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary, holding company, affiliate, or associate company of the Charterer.

Clause 18. *Efficient operation.* The Charterer agrees to conduct its business and its operations with respect to each Vessel in an economical and efficient manner.

Clause 19. *Use of United States goods.* Whenever practicable, the Charterer shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in Secti 505(a) of the Act, except when it necessary to purchase supplies an equipment outside the United States to enable a Vessel to continue and complete a voyage, and the Charterer shall perform repairs to the Vessel(s) within the continental limits of the United States, except in an emergency.

Clause 20. *Development of American-flag merchant marine.* The Charterer shall cooperate with the Owner and with other American-flag companies in the development of the American-flag merchant marine as a whole, and whenever practicable, the Charterer shall favor American-flag companies in transshipping of cargo, in selecting foreign domestic agents or other representatives, and in the rental of terminal and other facilities and in related matters.

Clause 21. *Services rendered vessel(s).* The Charterer, if and when requested by the Owner, shall file with the Owner rates and schedules covering any services rendered the Vessel(s) under this Agreement by any individual, firm or corporation.

Clause 22. *No transfer or assignment.* The Charterer shall not, without the Owner's written or telegraphic consent, sell, transfer, or assign this Agreement or any interest therein, or time charter or subcharter the Vessel(s), or make any arrangement whereby the maintenance, management, or operation of the Vessel(s) is to be performed by any other person.

Clause 23. *Preference and conference agreements.* (a) The Charterer shall not unjustly discriminate in any manner so as to give preference, directly or indirectly, in respect to cargo in which the Charterer has a direct or indirect ownership or purchase or vending interest. If the Charterer carries any cargo on its own behalf or for its own account or on behalf or for the account of any associate, affiliate, subsidiary, parent or holding company, the Charterer shall not discriminate in its own favor, or in favor of any such associate, affiliate, subsidiary, holding or parent company, in regard to rates charged or service rendered. The Charterer shall also hold confidential and shall not reveal to any such associate, affiliate, subsidiary, holding or parent company any information whatsoever, except such information as is generally made available to the public in the regular course of the steamship business in regard to cargo of similar kind or nature which the Charterer may at any time carry for any other interests or otherwise.

(b) The Charterer agrees not to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

Clause 24. *Libels.* Neither the Charterer nor the Master of the Vessel(s) nor any other person shall have the right, power, or authority to create, incur, or permit to be placed upon the Vessel(s) any liens whatsoever other than for crew's wages or salvage. The Charterer agrees to carry a properly certified copy of this Agreement with the ship's papers on board each Vessel and agrees to exhibit the same to any person having business with such Vessel and agrees also to exhibit the same to any representative of the Owner on demand.

The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessaries to the Vessel(s) that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the Vessel(s) any liens whatsoever, except for crew's wages and salvage. Such notice as far as may be practicable shall be in writing. The Charterer further agrees to fasten in each Vessel in a conspicuous place, and to maintain during the charter period, a notice reading as follows:

This Vessel is the property of the United States of America. It is under charter to:

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and by the terms of the charter neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any lien whatsoever, except for crew's wages and salvage.

The Owner shall indemnify and hold harmless and defend the Charterer against any liens, claims or liabilities of whatsoever nature upon the Vessel(s) at the time of delivery under this Agreement. The Charterer shall indemnify and hold harmless and defend the Owner against any liens of whatsoever nature upon the Vessel(s) and against any claims against the Owner arising out of the operation of the Vessel(s) by the Charterer, or out of any act or neglect of the Charterer, in relation to the Vessel(s) or the operation thereof, except insofar as such liens or claims arise out of any matter covered by the insurance procured and in force, as provided herein. If a libel should be filed against the Vessel(s) or if the Vessel(s) is/are otherwise levied against or taken in custody by virtue of legal proceedings in any court because of any liens or claims arising out of the operation of the Vessel(s) by the Charterer, the Charterer shall at its own expense within fifteen (15) days thereof cause the Vessel(s) to be released and the lien to be discharged.

Clause 25. *Insurance.* (a) The Charterer shall, at all times during the period of the Vessels' use under this Agreement, carry on each Vessel policies of insurance covering all marine and war risk hull and marine and war risk protection and indemnity risks, and all other hazards and liabilities in the amounts set out in Part I hereof, in such form and with such insurance companies, underwriters or funds as the Owner shall require and approve. All insurance required under the terms of this Agreement to be carried by the Charterer shall include the United States of America as an assured, without recourse against the United States for payment of premiums, or for assessments under any mutual form of policy. The underwriters shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any assured other than the United States of America could bring suit against the United States of America, under the Suits in Admiralty, Public Vessels or Tucker Acts to recover for such loss, and, notwithstanding the fact that the United States of America may be named as an assured and as payee in the policy, such loss shall be considered to have been paid to and sustained by any assured other than the United States of America, in the first instance.

(b) All losses under the policies of insurance carried on the Vessels, except those payable under crew insurance policies, shall be made payable to the Owner for distribution by it to itself and the Charterer as their interests may appear, provided, however, that in the absence of specific instructions to the contrary, P and I insurance claims in amounts not exceeding $10,000 may be payable directly to the Charterer. Charterer shall at Charterer's expense keep the Vessels entered in the Marine Index Bureau, Inc. The originals of all cover notes or binders and policies, except those for crew insurance, shall be delivered promptly to the Owner for its custody and approval.

(c) In the event that any of the insurance hereinbefore provided for shall not, by reason of any act, omission, or negligence of the Charterer, be kept in full force and effect, or for any reason, including but without limitation the existence of any deductible average, franchise provisions, or other exclusion contained therein, but excluding insolvency of the underwriters, does not cover in full all losses, damages, claims or demands, the Charterer shall indemnify and hold harmless and defend the Owner against all such losses, claims and demands.

(d) No tender of abandonment as a constructive total loss shall be made without the prior approval of the Owner, provided, however that in the event the Owner refuses to approve such tender or fails to act thereon within twenty (20) days after receipt of Charterer's request, then charter hire shall cease as of the date of such refusal or at the expiration of such twenty (20) day period, as the case may be, and provided further that charter hire shall cease only in the event that, but for the refusal of the Owner to agree to tender of abandonment, the amount which would have been recoverable from the hull insurance underwriters would have equalled or exceeded the amount set forth in Part I hereof.

Clause 26. *Bills of lading or voyage charters.* All bills of lading or voyage charters issued under this Agreement shall contain directly or by reference substantially the following clauses:

(i) *Clause paramount.* This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

(ii) *General average clause.* General average shall be adjusted, stated, and settled, according to York-Antwerp Rules, 1950, exclusive of Rule 22, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

(iii) *Amended "Jason" clause.* In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or act, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers.

(iv) *Liberties clauses.* In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

The carrier, master, and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction, condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority or either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods.

Clause 27. *General and particular average.* Average adjusters shall be appointed by the Charterer from a list of adjusters satisfactory to the Owner, who shall attend to the settlement and collection of both general and particular average losses subject to customary charges. The Charterer agrees to assist the adjuster in preparing the average statement and to take all other possible measures to protect the interests of each Vessel and the Owner.

Clause 28. *Salvage.* Earned salvage shall be prorated 25% to the Owner and 75% to the Charterer, after deducting Owner's and Charterer's expenses, Master's and Crew's shares, and legal and other expenses incident to the salvage, provided, however, that hire of the Vessel(s) shall not be considered an item of the Charterer's expense hereunder. Salvage earned by the Charterer shall be considered gross income as defined in Clause 38(a). Settlement of such claims for earned salvage shall be subject to the approval of both Owner and Charterer, Provided, that the amount of awards for the salving of vessels of which the United States, or any department or agency thereof, is the Owner or Owner pro hac vice, or for the cargoes and freights on such vessels, shall be approved by the Owner.

D. Management—Other Activities of Charterer

Clause 29. *Mergers, business not related to shipping.* The Charterer agrees that during the charter period it will not, without the prior written approval of the Owner, (1) effect any merger, consolidation or substantial acquisition or disposition of assets not in the ordinary course of business, or (2) directly or indirectly embark upon any new enterprise or business activity not directly connected with the business of shipping.

Clause 30. *Coastwise or intercoastal service.* Neither the Charterer nor any holding company, subsidiary, affiliate, or associate of the Charterer nor any officer, director, agent, or executive thereof shall, without the permission of the Owner granted pursuant to Section 805(a) of the Act, directly or indirectly, own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters or operates any vessel or vessels in the domestic intercoastal or coastwise service; Provided that, if such permission is or has been granted, none of the persons mentioned in this Clause shall divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign trade operation, for which a subsidiary is paid by the United States, into any such coastwise or intercoastal operations; Provided further, that where such permission is or has been granted pursuant to the Proviso clause of the first paragraph of Section 805(a) of the Act, in the event of substantial change in the character or extent of such operations over those conducted during 1935, the foregoing permission to continue such operations may be limited or terminated by the Owner, after notice to the Charterer and opportunity for hearing, with respect to any or all of the operations thus permitted.

Clause 31. *Supervision of employment.* Whenever the Charterer receives an operating-differential subsidy and is in default with respect to any mortgage, note, purchase contract or other obligation to the Owner, or has not maintained, in a manner satisfactory to the Owner, all of the reserves provided for in the Act, the Owner shall have the right to supervise the number and compensation of all officers and employees of the Charterer, and the Charterer shall then comply with all instructions of the Owner with respect thereto.

Clause 32. *Salaries and fees.* No salary for personal services in excess of $25,000 per annum paid to a director, officer, or employee by the Charterer, its affiliates, subsidiary, or associates, directly or indirectly, shall be taken into account under this Agreement. The terms "director," "officer," or "employee" shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent. The term "salary" shall include wages and allowances or compensation in any form for personal services which will result in a director, officer, or employee receiving total compensation for his personal services from such sources exceeding in amount or value $25,000 per annum.

Clause 33. *Employment of managing agent.* The Charterer shall not without the prior consent of the Owner employ any other person or concern as the managing or operating agent of the Charterer.

Clause 34. *Members or Delegates of Congress.* The Charterer shall not employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director. Except to the extent permitted by law, no Member of or Delegate to Congress or any Resident Commissioner is or shall be admitted to any share or interest in this Agreement, or any benefit that may arise therefrom.

Clause 35. *Rescission provision.* Upon determination by the Owner that any willful violation of any provision of Clauses, 30, 31, 32, 33 or 34 has occurred, the Owner shall have the right to rescind the Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 36. *Foreign-flag vessels.* Neither the Charterer, nor any holding company, subsidiary, affiliate, or associate of the Charterer, nor any officer, director, agent or executive thereof shall, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag vessel service which may be determined by the Owner to be essential pursuant to Section 211 of the Act, except as the Owner in its discretion and for a specific period of time may otherwise permit in accordance with the provisions of the Act.

E. Accounting—Definitions

Clause 37. *Accounting, report and supervision.* (a) The Charterer and, to the extent required by the Owner, every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the Charterer:

(1) Shall keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the Vessel(s) covered by this Agreement in accordance with the "Uniform System of Accounts for Maritime Carriers" prescribed by the Maritime Administration, U.S. Department of Transportation, in General Order 22, Revised, (Issue of 1950) effective January 1, 1951, and under such regulations as may be prescribed by the Owner; *Provided,* That notwithstanding the provisions of said General Order 22, Re-

vised, such reserves as may be specifically authorized by the Owner shall be taken into account in the determination of "Net Voyage Profit" hereunder or the expenses to provide for which such reserves are so authorized shall be distributed over the period of use hereunder of the Vessel involved in such manner as will accomplish the same result as though such reserves were established, all pursuant to regulations prescribed by the Owner; and *Provided further*, That if the Charterer is subject to the jurisdiction of the Interstate Commerce Commission, the Owner shall not require the duplication of books, records, and accounts required to be kept in some other form by that Commission; and

(2) Shall file, upon notice from the Owner, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, memoranda of any facts and transactions, which in the opinion of the Owner affect the financial results in, the performance of, or transactions or operations under, this Agreement. The Owner reserves the right to require that all or any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Owner. Specific reporting requirements subsequently prescribed will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(b) The Owner is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Clause whenever it may deem it necessary or desirable, including an analysis of the surplus and all supporting accounts. The Charterer agrees to allow any and all auditors, inspectors, attorneys, and other employees, designated by the Owner, full, free and complete access at all reasonable times, to the Vessel when in port or undergoing repairs, and to all books, records, papers, memoranda or other documents of the Charterer wherever located or of any holding company, subsidiary company or affiliated company of the Charterer pertaining to any activities relating in any way to the Vessel(s), and further agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge adequate office space and other facilities reasonably required by such auditors, attorneys, or inspectors in the performance of their duties. The Charterer further agrees to establish and maintain from time to time such checks upon or systems of control of expenditures or revenues in connection with the operation of the Vessel(s) as the Owner may request.

(c) Upon the willful failure or willful refusal of any person described in this Clause to comply with the above provisions of this Clause, the Owner shall have the right to rescind this Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 38. *Definitions*. The terms "net voyage profit," "fair and reasonable overhead expenses," and "capital necessarily employed" as used herein with respect to the operations of the Vessel(s) and services incident thereto are hereby defined for the purpose of this Agreement only, as follows:

(a) "Net voyage profit" shall be determined by deducting from gross income, as hereinafter defined, such direct vessel operating expenses, terminal and other auxiliary operating expenses, overhead expenses, interest expense, amortization of deferred charges, depreciation on property utilized in the operation of the Vessel(s) and all other charges which are customarily made in accordance with sound accounting practice in determining net profits before provision for federal income taxes, all as the Owner may deem fair and reasonable, provided, that in instances where the Charterer engages in other activities in addition to the operation of the Vessel(s) covered by this Agreement, such charges, other than those directly and exclusively allocable to the operation of the Vessel(s) shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

"Gross income" shall include such items as revenue earned from the carriage of cargo, passengers, and mail, terminal and other auxiliary operations and miscellaneous profits and losses, such as those arising from pooling agreements, advance and prepaid beyond items, bar and slop chest, and such other transactions as the Owner may determine are properly included. "Gross income" shall include also interest earned, dividends received, and other non-operating income, as well as all accruals, if any, to the Charterer as an operating-differential subsidy. If the Charterer engages in any other activities in addition to the operation of the Vessel(s), the revenues and miscellaneous income, other than those exclusively applicable to the operation of the Vessel(s), shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

Income consisting of capital gains and expenses consisting of capital losses shall in no event be included in the computation of "Net Voyage Profit," as above defined.

Income from and expenses attributable to assets, other than the Vessel(s), excluded in the computation of "Capital Necessarily Employed," as hereinafter defined, shall not be included in the computation of "Net Voyage Profit," as above defined.

In determining "Net Voyage Profit," as above defined, all profits of persons performing services or supplying facilities to the Charterer which are required to be included in the earnings of the Charterer under section 803 of the Act shall be taken into account.

(b) "Fair and reasonable overhead expenses" shall include those expenses actually and necessarily incurred in the conduct of the business of operating the Vessel(s), such as salaries of officers; wages of employees; legal and accounting fees and expenses; rent, heat, light, and power; communciation expenses; office supplies, stationery, and printing; membership dues and subscriptions; entertaining and solicitation; traveling expenses; insurance and bond premiums; postage; maintenance of office equipment; and miscellaneous administrative and general expenses; all as the Owner may determine to be fair and reasonable and properly included, provided, that there shall be deducted from the total of such expenses, agency fees, commissions, brokerage, and such other miscellaneous earnings as the Owner may determine to be properly deductible.

"Fair and reasonable overhead expenses" shall include also freight, passenger, and other expenses incident to advertising the Vessel(s) and the route served; taxes, other than Federal income taxes; and management and operating commissions, but only if and in the cases where the express written consent of the Owner has been given the Charterer to employ any other person or concern as the managing or operating agent of the Charterer; all as the Owner may determine to be fair and reasonable and properly included.

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the "Fair and Reasonable Overhead Expenses" other than those directly and exclusively allocable to the Operation of the Vessel(s) shall be prorated between such activities on such basis as the Owner may determine to be fair and reasonable.

(c) Except in instances where the Charterer is granted an operating-differential subsidy (which is covered by the last paragraph of this subsection (c)), "Capital necessarily employed" shall be determined upon the basis of the net worth reported by the Charterer in its balance sheet as of the close of the month preceding the date of delivery of the first vessel under this Agreement (or in the last previous balance sheet deemed by the Owner to fairly present the financial position of the Charterer, but adjusted to take into account subsequent changes in net worth and such other changes as the Owner may deem essential to a proper determination of "Capital Employed" as at the end of such month), and as at each succeeding December 31st during the effective period of the Agreement, adjusted as hereinafter provided. For the purpose of this determination, net worth, as stated in the balance sheet of the Charterer, shall be deemed to include capital stock, surplus and such subdivisions thereof as capital surplus, earned surplus, and accounts of like nature. Net worth, as thus stated, shall be adjusted in such manner as the Owner may determine to be fair and reasonable, including the elimination of appreciation, adequate statement of the liabilities, and such other adjustments as are consistent with sound accounting principles. In the computation of "Capital Necessarily Employed," good will, intangibles not actually purchased and paid for, and stock held in treasury shall be excluded.

Property and other assets utilized in the operation of the Vessel(s) shall be valued at cost, including betterments and reconditioning costs, to the present owner or to any former owner at any time affiliated or associated directly or indirectly with the present owner, whichever is the lower, less depreciation; provided, that the cost of acquisition of assets acquired in exchange for capital share or other securities of the Charterer from other than holding, subsidiary, affiliated, or associated companies, shall not be in excess of the fair value of such property at the date of acquisition.

Additional capital, in the form of cash or tangible property paid in during the charter period, shall be included in the computation of "Capital Necessarily Employed" from the date paid in. Conversely, any withdrawals of capital shall be deducted from the date withdrawn; provided, however, that no capital shall be withdrawn and no share capital shall be converted into debt without the prior written approval of the Owner. Earnings and capital gains (or losses) for any accounting period subsequent to the last day of the month preceding the month during which delivery of the first Vessel is made hereunder to the Charterer by the Owner shall not be included in the computation of the "Capital Necessarily Employed" for the year or other accounting period in which realized (or sustained). Dividends paid out of earnings that have not been included in "Capital Employed" shall not be deducted from "Capital Employed."

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the Owner shall determine the proper allocation of capital as between such activities. The amount so allocated to the operation of the Vessel(s) shall be deemed to be the "Capital Necessarily Employed."

In the event the Charterer is granted an operating-differential subsidy, "Capital Necessarily Employed" in the business of the Vessel(s) chartered hereunder shall be determined upon the bases provided by the United States Maritime Commission with respect to subsidized vessels in its General Order No. 71 as adopted by its successors, the Federal Maritime Board and Maritime Administration, and amended from time to time, excepting inapplicable provisions of that Order (such as those relating to (1) ship equities, (2) deposits in the Special Reserve Fund, (3) deposits in the Capital Reserve Fund, and (4) progress payments on vessels under construction) as determined by the Owner.

F. Termination—Miscellaneous

Clause 39. *Events of default.* The following shall constitute events of default under this Agreement:

(a) The failure of the Charterer to pay the charter hire on each Vessel as and when the same shall be due under the terms of this Agreement.

(b) The failure of the Charterer to operate each Vessel as required by Clause E, Part I, or the operation of the Vessel(s) on some other route without the prior written approval of the Owner.

(c) Any material misrepresentation by the Charterer in connection with this Agreement whether before or after execution hereof and whether made in an application, report or otherwise, or any wilful failure by the Charterer to disclose information necessary to cause any material representation by it not to be misleading.

(d) The occurrence of any event causing the Charterer to be ineligible for charter of the Owner's vessels.

(e) A voluntary sale by the Charterer of this Agreement or any interest therein, or any assignment, transfer, agreement or any other arrangement whereby the maintenance, management or operation of the above described service, route, or Vessel(s) shall pass out of the direct control of the Charterer without the consent of the Owner.

(f) The filing of a petition in bankruptcy by the Charterer or the entry of an order, upon petition against the Charterer, adjudicating the Charterer a bankrupt, or the making of a general assignment for the benefit of creditors, or the Charterer losing its charter by foreiture or otherwise, or the appointment of a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or Equity proceedings, and whether temporary or permanent, for the property of the Charterer, or the filing of a petition by the Charterer for reorganization under the Bankruptcy Act, or the filing of such a petition by creditors and the same approved by the court, or the approval of the court of a reorganization of the Charterer under said Act, whether proposed by a creditor, a stockholder or any other person whomsoever.

(g) Any breach by the Charterer of its obligations under this Agreement (including but without limitation, the obligation to maintain a Performance Bond as required by Clause 3) or any agreement executed in connection therewith (including but not limited to any operating-differential subsidy agreement with respect to the Vessel), or any ship mortgage given to construction agreement made with the United States.

(h) Failure by the Charterer to comply with any applicable provision of the Merchant Marine Act, 1936, as amended, or of any law relating to the operation of the Vessel(s).

(i) Failure by any subsidiary company, holding company, affiliate company or associate company of the Charterer, or failure by any person performing services or supplying facilities to the Charterer subject to the provisions of section 803 of the Act, to conform to the provisions of this Agreement.

Clause 40. *Termination upon default.* (a) The Owner may terminate this Agreement in whole or in part without notice to the Charterer in case any event of default specified in paragraph (a), (b), (c), (d), (e) or (f) of the preceding Clause 39 shall occur, or if any other default specified in paragraph (g), (h) or (i) of said Clause shall occur and shall continue for a period of 30 days after notice thereof has been mailed or telegraphed by the Owner to the Charterer.

(b) Upon termination, the Owner may, at its option, retake the Vessel(s), wherever the same may be found, whether upon the high seas or in any port, harbor, or other place, without prior demand and without legal process and for that purpose may enter upon any dock, pier, or other premises where the Vessel(s) may be and may take possession thereof, or may require the Charterer to redeliver such Vessel(s) in accordance with terms of this Agreement immediately upon the receipt of a notice demanding such redelivery.

(c) The rights conferred upon the Owner by this Clause are cumulative and in addition to any rights which it may have at law or in equity or by virtue of the terms of the Agreement.

Clause 41. *Termination of business.* Upon termination of this Agreement, the Charterer shall turn over to the Owner, at such time and at such place as the Owner may direct, each Vessel and all property of whatsoever nature which the Owner may theretofore have delivered to the Charterer or to which the Owner is entitled under the terms of this Agreement, and the Charterer shall at its own expense make to the owner such accounting as the Owner may require of all matters arising out of the operation of the Vessel(s) and this Agreement, and shall adjust, settle, and liquidate such accounts, provided, however, that the Owner may collect directly all freight moneys or other debts remaining unpaid and apply any moneys collected on any unpaid balance due from the Charterer to the Owner. All expenses of such collection shall be for the account of the Charterer.

Clause 42. *Cancellation or modification by mutual consent.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

Clause 43. *Warranty against contingent fees.* The Charterer warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Charterer for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to annul this contract without liability or in its discretion to require the Charterer to pay, in addition to the charter hire, the full amount of such commission, percentage, brokerage, or contingent fee.

Clause 44. *Renegotiation.* This Agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, as amended and extended. The Contractor (which term as used in this sentence in the Bareboat Charterer Agreement, means the Bareboat Charterer, and, as used in this sentence in related sub-contracts shall mean the party contracting to perform the work or furnish the materials required under such sub-contract) shall, in compliance with said section 104, insert the provisions of this Clause in each sub-contract and purchase order made or issued in carrying out this Agreement.

Clause 45. *Citizenship.* The Charterer hereby warrants and represents that it is and at all time during the period of this Agreement will continue to be a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended.

Clause 46. *Officers and crew.* The Charterer agrees, with respect to the Vessel(s) that during the period of this Agreement:

(a) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew; the Charterer shall comply with all rules and regulations promulgated by the appropriate agencies of the United States.

(b) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Owner, providing they file such complaint or recommendation directly with the Owner or with their immediate superior officer, who shall be required to forward such complaint or recommendation with his remarks to the Owner, or with the authorized representative of the respective collective bargaining agencies.

(c) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the United States Coast Guard or its successor.

(d) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia.

(e) No discrimination shall be practiced against licensed officers who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

(f) The Charterer shall comply with all laws governing the citizenship of licensed officers and crews, including section 302 of the Act.

Clause 47. *Nondiscrimination in employment.* In connection with the performance of work under this Agreement, the Charterer agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Charterer agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of the nondiscrimination clause.

The Charterer further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials.

Clause 48. *Notices.* Unless otherwise provided in this Agreement or mutually agreed upon, all payments, notices and communications from the Owner to the Charterer, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Charterer at the address provided herein, and all payments, notices and communications from the Charterer to the Owner, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Owner at its offices in Washington, District of Columbia.

Clause 49. *Headnotes.* The use of headnotes at the beginning of the clauses of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the clauses themselves.

(c) The charterer's books, records, and accounts, required to be kept and maintained under Clause 37(1), Part II, of Form No. 705 charter, shall be retained by the charterer for a period of three (3) years after a release or final settlement is completed between the Maritime Administration and the charterer.

APPENDIX TO PART 221

I. Transfer of Documented Vessels to Foreign Registry or Ownership, or Both

Each application for the transfer to foreign registry or ownership or both or to the authority of a foreign country (hereinafter referred to as a "foreign transfer") of any vessel of 3,000 gross tons and over will be evaluated on its individual merits with consideration being given to the following:

(1) The type, size, speed, general condition, and age of the vessel;

(2) The acceptability of the foreign buyer and country of registry; and

(3) The need to retain the vessel under U.S. flag or ownership and control for the purposes of national defense, maintenance of an adequate merchant marine, foreign policy of the United States, and the national interest.

II. Conditions of Approval

The Maritime Administrator's approval of foreign transfer of vessels of 3,000 gross tons and over, under section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App. U.S.C. 808 and 835), whether such transfer is for operation or scrapping, shall be subject to the terms and conditions hereinafter stated.

If the vessel is being transferred for foreign flag operation, the terms and conditions shall run with the title to the vessel and shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President, whichever period is longer. The economic life of a vessel for the purpose of this statement of policy is 25 years from the date the vessel was delivered by the shipbuilder. This period will be extended another five years, or such other period of time approved by the Maritime Administrator, if the vessel is converted or jumboized. The terms and conditions are as follows:

A. Transfer of Existing Vessels of 3,000 Gross Tons or Over to Either Foreign Registry or Ownership, or Both, or to the Authority of a Foreign Government

(1) *Ownership.* (a) Without the prior approval of the Maritime Administrator, there shall be no transfer in the ownership or change in the registry of such vessel.

(b) Without the prior approval of the Maritime Administrator, there shall be no transfer of stock interest in the foreign corporate contractor to persons not citizens of the United States (within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802)). However, transfers of such stock or changes in ownership resulting from the death of any stockholder or owner are not subject to this condition. Notification of any such transfer of stock or ownership occurring by reason of death shall be filed with the Maritime Administrator within 60 days from the date of the transfer of stock or change of ownership.

(2) *Availability.* The vessel shall, if requested by the United States or any qualified department or agency thereof, be sold or chartered to the United States on the same terms and conditions upon which a ship owned by a citizen of the United States could be requisitioned for purchase or charter, as provided for in section 902 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242). If the foreign transfer of the vessel is to the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Administrator will consider this condition satisfied if the vessel upon request is made available to a NATO country.

(3) *Trade.* (a) The vessel shall not be chartered to aliens on a demise or bareboat basis without the prior approval of the Maritime Administrator; and,

(b) There shall be no charter or other foreign transfer to a non-citizen for carriage of cargoes of any kind to or from the USSR, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, Poland, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia Manchuria, Libya, Iran or Cuba, without the prior approval of the Maritime Administrator. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

(4) *Default.* In the event of default under conditions 1 or 2 or 3 above, the vessels approved for foreign transfer shall be subject to the penalties imposed by section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839). Pursuant to the provisions of section 38 of the Shipping Act, 1916, as amended (46 App. U.S.C. 836), the Maritime Administrator may remit the forfeiture of the vessel provided for in section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839), upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture and the execution of a new agreement containing substantially the same conditions set forth above which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sum of money, a foreign contractor owned or controlled by foreign citizens shall agree by way of a contract approved as to form by the Chief Counsel of the Maritime Administration to comply with the above conditions and to provide a United States commercial surety bond or other surety acceptable to the Maritime Administrator for an amount ranging from $25,000 to $250,000 depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(a) An irrevocable letter of credit directly issued by a United States bank;

(b) United States Government securities;

(c) The written guarantee of a friendly government of which the foreign person is a national; or

(d) A written guarantee or penal bond by a United States corporation which is found to be financially qualified to service the undertaking to pay the stipulated amount.

If the foreign person is owned or controlled by U.S. citizens, the foreign person and its principal U.S. citizen owners shall agree in form satisfactory to the Chief Counsel, Maritime Administration, to pay an amount ranging from $25,000 to $250,000, such agreement to be secured by the written guarantee of said parties, or other form of guarantee, as may be required by the Maritime Administrator.

B. Sale of U.S. Documented Vessels of 3,000 Gross Tons and Over to Foreign Buyers for Scrapping Abroad

(1) *Ownership.* The vessel or any interest therein shall not be sold without the prior written approval of the Maritime Administration.

(2) *Time within which to be scrapped.* Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, steamship, or any other means of transportation.

(3) *Distribution of scrap material.* The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any noncitizen of the United States residing in the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Manchuria, Libya, Iran, Vietnam, Laos, Kampuchea, Outer Mongolia, or Cuba. Such scrap shall not be exported to these countries. In addition, the engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) *Default.* In the event of default under any or all of (1), (2), and (3) above, the contractor shall pay to the Maritime Administration, Department of Transportation, without prejudice to any other rights which the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other guarantee satisfactory to the Maritime Administration. "Other guarantee" may be one of those set out in section A(4) of this statement of policy.

(5) *Evidence of scrapping and destination of scrap materials.* There shall be filed with the Maritime Administrator a certificate or other evidence satisfactory to its Chief Counsel, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap, the engines, machinery and major items of equipment have been accomplished in the manner prescribed by this section.

C. Resident Agent in the United States to Accept Service of Process for Foreign Transferee

All foreign transferees, whether corporate entities, associations, companies, partnerships, individuals, or joint ventures, which or who have been granted approval by the Maritime Administration pursuant to section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App. U.S.C. 808 and 835), shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, appoint and designate a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United States of America relating to any claim arising out of the approved transaction. This appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written consent and approval of the Maritime Administrator. The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States, shall be a banking or lending institution or a ship operating or shipowning company incorporated under the laws of the United States, or another U.S. corporation which is satisfactory to the Maritime Administrator. No individual and no foreign business entity will be accepted as a resident agent.

The foreign transferee shall file with the Maritime Administrator a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent that it accepts the appointment, that it will act thereunder and that it will notify in writing the Maritime Administrator in the event it is disqualified from so acting by reason of any legal restrictions. Service of process or notice upon any officer, agent, or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

The subsequent transfer of ownership or registry of vessels which have been transferred to either foreign ownership or registry or both or to authority of a foreign government subject to Maritime Administration contractual control, as set forth above, will be subject to substantially the same Maritime Administration policy that governed the original transfer and sale, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent transfers will be subject to the same terms and conditions governing the foreign transfer at the time of the previous transfer.

The completion of all approved transactions, either by virtue of sections 9, 37 and 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808, 835 and 839), or the Maritime Administration's contract with the foreign person, will be authorized by notification in the form of a Transfer Order to all interested parties, upon the receipt of the executed contract, the required bond or other surety, and other supporting documents required by said contract.

In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Maritime Administrator of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished to the Maritime Administrator as soon as possible, but not later than ten days after the same has occurred.

III. Vessels Under 3,000 Gross Tons

Generally, the Maritime Administrator will grant approvals required by section 9 or 37 or both of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808 and 835), of vessels of under 3,000 gross tons provided the vessel is not needed for reasons of national defense and provided also that the foreign person and country of registry are acceptable to the Maritime Administration. Except an unusual circumstances, no conditions will be imposed.

PART 222—STATEMENTS, REPORTS, AND AGREEMENTS REQUIRED TO BE FILED

CARGO AND PASSENGER REPORTS

Sec.
222.1 Statements required to be filed pursuant to section 807, Merchant Marine Act, 1936.
222.2 Container/Trailer Report–Foreign Trade.
222.3 Penalty.
222.4 Notice of failure to comply herewith and that petition for relief may be filed.
222.5 Petition for relief.

AUTHORITY: Sec. 21, 39 Stat. 736, as amended, sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 820, 1114.

CARGO AND PASSENGER REPORTS

§ 222.1 Statements required to be filed pursuant to section 807, Merchant Marine Act, 1936.

(a) *Statement of shipbuilder or ship operator.* Every shipbuilder or ship operator holding or applying for a contract under the provisions of the Merchant Marine Act, 1936, as amended, and every subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator who employs or retains any person (as defined in paragraph (c) of this section) to present, advocate, or oppose, before Congress or any committee thereof, or before the Secretary of Transportation, the Maritime Subsidy Board, or the Maritime Administration, any matter within the scope of the Shipping Act, 1916, as amended, the Merchant Marine Act, 1920, as amended, the Merchant Marine Act, 1928, as amended, the Intercoastal Shipping Act, 1933, as amended, or the Merchant Marine Act, 1936, as amended, before performance by such person pursuant to such employment or retainer, shall file with the Secretary, Maritime Subsidy Board/Maritime Administration, a statement containing the information specified in Form MA-807-1. While it is not required that Form MA-807-1 be used, the statement must contain the information required by that form and the information must be arranged in the manner prescribed by that form. Copies of Form MA-807-1 may be obtained from the Secretary, Maritime Subsidy Board/Maritime Administration. Any changes which may occur in answer to any of the items in the statement shall be reported to the Secretary, Maritime Subsidy Board/Maritime Administration, within 10 days after such change.

(b) *Statement of person employed or retained.* Every person (as defined in paragraph (c) of this section) employed or retained by any shipbuilder or ship operator holding or applying for a contract under the provisions of the Merchant Marine Act, 1936, as amended, or employed or retained by any subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator to present, advocate, or oppose, before Congress or any committee thereof, or before the Secretary of Transportation, the Maritime Subsidy Board, or the Maritime Administration, any matter within the scope of the Shipping Act, 1916, as amended, the Merchant Marine Act, 1920, as amended, the Merchant Marine Act, 1928, as amended, the Intercoastal Shipping Act, 1933, as amended, or the Merchant Marine Act, 1936, as amended, shall file with the Secretary, Maritime Subsidy Board/Maritime Administration, within 30 days after the close of each calendar month during the period of such retainer or employment, a statement containing the information specified in Form MA-807-2. While it is not required that Form MA-807-2 be used, the statement must contain the information required by that form and the information must be arranged in the manner prescribed by that form. Copies of Form MA-807-2 may be obtained from the Secretary, Maritime Subsidy Board/Maritime Administration.

(c) *Definition of "person".* For the purpose of this section, the term person is defined as in section 905(b) of the Merchant Marine Act, 1936.

(d) *Additional information.* The Maritime Subsidy Board and the Maritime Administrator reserve the right to require the filing of additional information in any given case.

(Approved by the Office of Management and Budget under control number 2133-0008)

(Sec. 807, 49 Stat. 2014, as amended; 46 U.S.C. 1225)

[22 FR 1087, Feb. 22, 1957, as amended at 33 FR 2944, Feb. 14, 1968; 47 FR 25530, June 14, 1982]

§ 222.2 Container/Trailer Report-Foreign Trade.

The operator of a vessel carrying 25 or more 8×8×20 foot containers or trailers or the equivalent thereof in twenty-foot equivalent units (TEU's) in waterborne foreign commerce of the United States shall file Form MA-578A in duplicate with the appropriate District Director of Customs for transmittal to the Maritime Administration before midnight of the 30th calendar day after entry into the first U.S. port, and before midnight of the 30th calendar day after clearing the last U.S. port.

(Approved by the Office of Management and Budget under control number 2133-0016)

(Sec. 212(A), Merchant Marine Act, 1936 amended (46 U.S.C. 1122(a), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No 7 of 1967 (75 Stat. 840), amended by Pub. L 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973))

[43 FR 22981, May 30, 1978, as amended at 47 FR 25530, June 14, 1982]

§ 222.3 Penalty.

Section 212(A) of the Merchant Marine Act, 1936, as amended (Pub. L 612, 84th Congress; 70 Stat. 332; 46 U.S.C. 1122a), provides:

> SEC. 212(A). The operator of a vessel in waterborne foreign commerce of the United States shall file at such time and in such manner as the Secretary of Transportation may prescribe by regulations, such report

account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Transportation, may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

(Sec. 212(A), 70 Stat. 332; 46 U.S.C. 1122a)

[G.O. 39, 3d Rev., 27 FR 4883, May 24, 1962]

§ 222.4 Notice of failure to comply herewith and that petition for relief may be filed.

(a) Every offender under the regulations in this part shall be advised by the District Director of Customs as defined in 19 CFR 1.1(d) of any penalty incurred by him and of his right to apply for relief under § 222.5. If the offender fails to petition for relief or pay the penalty within 60 days from the date of mailing of the notice of violation as provided for herein, the case shall be referred immediately to the United States attorney for appropriate action, unless it appears that the person liable for the penalty is absent from the United States or during the said period was absent for more than 30 days, in which event the collector may withhold such action for a further reasonable time, or unless other action is expressly authorized by the Maritime Administrator. When a penalty is mitigated, and the mitigated penalty is not paid nor a supplemental petition filed within 60 days from the date a notice of the settlement is mailed to the petitioner, the matter shall be referred immediately to the United States attorney for appropriate attention, unless other action has been directed by the Maritime Administrator.

(b) No action looking to the remission or mitigation of a penalty shall be taken on any petition, irrespective of the amount involved, if the case has been referred to the Department of Justice for the institution of legal proceedings.

(Sec. 212(A), 70 Stat. 332; 46 U.S.C. 1122a)

[G.O. 39, 3d Rev., 27 FR 4883, May 24, 1962, as amended at 33 FR 2944, Feb. 14, 1968]

§ 222.5 Petition for relief.

(a) Any petition for relief from a penalty incurred under these regulations shall be addressed to the Maritime Administrator, signed by the petitioner, and filed with the collector of customs of the district in which the penalty was imposed. It shall set forth the facts relied upon the petitioner to justify his request for relief.

(b) Upon receipt of a petition, the collector shall cause such investigation to be made as the facts in the case may warrant. In forwarding the petition to the Maritime Administrator, he shall forward with it a copy of the report of the investigation, if any, a statement of all other facts which may have come to his knowledge, and his recommendation as to the final action to be taken. If the petition involves a matter which has been referred to the Department of Justice for the institution of court proceedings, the collector shall transmit the petition immediately upon receipt to the appropriate United States attorney and notify the petitioner of such action.

(c) The decision of the Maritime Administrator will be forwarded to the collector for delivery to the petitioner.

(Sec. 212(A), 70 Stat. 332; 46 U.S.C. 1122a)

[G.O. 39, 3d Rev., 27 FR 4883, May 24, 1962]

PART 232—UNIFORM FINANCIAL REPORTING REQUIREMENTS

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AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (Aug. 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981); sec. 801, Merchant Marine Act, 1936, as amended (46 U.S.C. 1211); sec. 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820); Pub. L. 97-31 (Aug. 6, 1981).

SOURCE: 48 FR 30122, June 30, 1983, unless otherwise noted.

§ 232.1 Purpose and applicability.

(a) *Purpose.* The purpose of this regulation is to establish uniform reporting requirements for the preparation of financial reports and submissions of information to the Maritime Administration. The Maritime Administration will, as necessary, issue clarifying instructions to those subject to these reporting requirements to assist in their interpretation and application. The uniform reporting requirements consist of:

(1) A chart of accounts defined in this regulation.

(2) Standard financial report formats, set forth in Form MA-172 (Revised).

(b) *Applicability.* This regulation is applicable to all contractors submitting required financial reports or other financial information in accordance with agreements entered into under provisions of Titles II, V, VI, VII and XI of the Merchant Marine Act, 1936, as amended, and the Shipping Act, 1916, as amended.

§ 232.2 General instructions.

(a) *Use of generally accepted accounting principles.* All contractors shall conform their accounting policies to generally accepted accounting principles applicable to their segment of the maritime or other appropriate industry, modified, as appropriate to be consistent with accounting policies and principles provided for in this regulation.

(b) *Need to conform accounting information.* All contractors may continue to use their current accounting system, if the system provides a basis for the preparation of reports in the prescribed formats and is consistent with the accounting principles contained in this part.

(c) *Accrual accounting.* (1) Contractors shall recognize revenue and expense in accordance with accrual principles. In those instances where the contractor incurs expenses, but has not determined actual costs, the contractor shall record reasonable accruals (estimated costs) in the appropriate accounts of the required financial reports.

(2) The contractor shall record estimated accrued expenses and maintain adequate controls to assure the reasonableness of the costs used in the financial reports.

(d) *Reconciliation of financial reports.* When a contractor issues interim or annual certified financial statements following accounting policies different from those established by this part, the contractor shall clearly set forth the nature and amount of each adjustment necessary to reconcile the published statements filed with the Maritime Administration.

(e) *Submission of questions.* (1) A contractor may submit in writing any question involving the interpretation of any provision of this part for consideration and decision to the Director, Office of Financial Management, Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Appeals from such interpretation will be in accordance with the interpretation letter.

(2) A contractor who has a question of financial accounting or reporting procedure pending before the Maritime Administration at the time a financial report is due shall file the report in accordance with established scheduled dates. The contractor shall include in the report a footnote disclosure that adequately describes the question pending, the manner of presentation in the report, and the relative impact on the balance sheet and income statement, respectively.

(f) *Effective date.* This regulation is effective as of the date first published as a final rule in the FEDERAL REGISTER. The regulation may be optionally applied to financial reports submitted for semiannual accounting periods ending between the date of publication and June 30, 1983, and becomes mandatory for annual financial reports submitted for accounting periods ending June 30, 1983, and thereafter.

§ 232.3 Chart of accounts.

(a) *Purpose of accounts.* A contractor shall use this chart of accounts as a basis for preparing the financial statements and for other required financial reports required to be submitted to the Maritime Administration.

(b) *Account numbers.* Contractors are not required to use these account numbers or titles for their internal accounting.

(Approved by the Office of Management and Budget under control number 2133-0005)

BALANCE SHEET

§ 232.4 Balance sheet accounts.

(a) *Accounts defined.* Each account is identified by an account number and an account title, followed by a text describing the accounting information to be included in that account. Where considered necessary, accounting procedures are also included to explain how the contractor shall disclose information for reporting purposes.

(b) *Purpose of balance sheet accounts.* The balance sheet accounts are intended to disclose the financial condition of the contractor as of a given date.

(A) *Asset Accounts.*

(*1*) *100 Cash.*

(i) This account shall include the amount of current funds available on demand in the hands of financial officers or deposited in banks or trust companies, including cash in transit for which agents or others have received credit. Cash appropriated or otherwise restricted for any purpose shall be included in Account 300, "Restricted Funds."

(ii) Compensating balances included in this account shall be disclosed by appropriate footnote.

(*2*) *120 Marketable Securities.*

(i) This account shall include securities and other temporary investments which are available for general purposes of the business. In no case shall securities of the reporting contractor or of an affiliated company be included in this account. Separate subaccounts may be used to account for discounts and premiums on marketable securities.

(ii) For financial reporting, the lower of aggregate cost or market value at the balance sheet date shall be used to value securities included in this account.

(3) *140 Notes Receivable.*

(i) This account shall include the amount of all obligations in the form of short-term notes receivable or other evidences (except interest coupons) of money receivable and due on demand or within one year from date of issue.

(ii) Subaccounts shall be used to segregate notes receivable from officers and employees, affiliated companies, officers and employees of affiliated companies, and all others.

(4) *150 Accounts Receivable.*

(i) This account shall include trade or traffic receivables and claims receivable from insurance underwriters and other miscellaneous receivables not otherwise provided for in other accounts. Accrued accounts receivable for interest, dividends, rents, royalties, charters and other unmatured receivables of a current nature shall be reported in this account, except those accrued amounts which are required to be deposited to a restricted fund.

(ii) Separate subaccounts shall be used to account for trade or traffic receivables, claims receivables, miscellaneous receivables and for accounts receivable arising from transactions with officers and employees, affiliated companies, officers and employees of affiliated companies.

(iii) This account shall also be used to report construction-differential subsidy (CDS) and operating-differential subsidy (ODS) estimated to have accrued to the contractor and which remain unpaid as of the balance sheet date.

(iv) Separate subaccounts shall be maintained by contract number and, under each contract, identified by year of termination and by category of subsidy as applicable, e.g., for CDS categories may include design and inspection costs; and for ODS categories may include wages, maintenance and repair, and any other category for which the contractor receives an operating subsidy.

(5) *160 Estimated Allowance for Doubtful Notes and Accounts Receivable.*

This account shall be credited at the close of each accounting period for estimated uncollectible notes and accounts.

(6) *170 Other Current Assets.*

(i) Inventories, prepaid expenses and other items that are expected to be used or consumed within 12 months of purchase or acquisition shall be reported in this account.

(ii) Acquisition of similar items that will not be used or consumed within one year should be reported as part of account 360, Other Assets.

(iii) For Financial Report purposes, this account shall be used to record the contra entries of accrued deposits in account 300 Restricted Funds.

(7) *300 Restricted Funds.*

(i) This account shall include the amount of cash and securities (at cost) deposited to any restricted fund, including but not limited to Title XI Reserve or Restricted Fund, Capital Construction Fund, Construction Reserve Fund, Title XI Escrow Fund, Title XI Construction Fund, Drilling Rig Reserve Fund, Insurance Fund, Debt Retirement Fund, special and guarantee deposits.

(ii) For each fund established, subsidiary accounts shall be used to separately account for cash or securities deposited to the fund. At the close of each accounting period accrual entries shall be made to account for earned but undeposited investment income.

(iii) Compensating balances under an agreement which legally restricts the use of such funds and constitutes support for borrowing arrangements shall be included in this account.

(iv) Deposits required to be made into any Restricted Fund are to be included in the column "Accrued for Deposit"—appearing in Schedule 211. The contra entry for the accrual shall be credited to account 170 Other Current Assets.

(8) *310 Investments.*

(i) This account shall include amounts of investment instruments intended to be held more than one year and includes securities of affiliated companies, noncurrent notes receivable and noncurrent accounts receiv ble, both from affiliates and others, cash value of life insurance policies and other investments. Noncurrent marketable securities shall be carried at the lower of aggregate cost or market value at the balance sheet date.

(ii) Subaccounts shall be maintained to account for the various investments. For noncurrent notes and accounts receivable additional accounts shall be used to readily identify amounts pertaining to affiliated companies.

(iii) For financial reporting purposes, the lower of cost or market value at the close of business on the balance sheet date will be used to value the securities included in the account except as noted below.

(iv) Investments in affiliated companies must be reported using the equity or consolidated basis of accounting as adopted by the Financial Accounting Standards Board.

(9) 330 Property and Equipment.

(i) This account shall include the cost of acquisition or construction and related capitalizable cost, including additions and betterments and all other associated cost necessary to place the respective property and equipment in acceptable condition for its intended use. This account shall also include the capitalized amount of financing leases, computed in accordance with generally accepted accounting principles, as prescribed by the Securities and Exchange Commission and the Financial Accounting Standard Board.

(ii) Subaccounts shall be maintained by type and category of property and equipment such as, but not limited to, the following: (A) Floating equipment, including self-propelled vessels for transporting cargo or passengers in U.S. foreign or worldwide foreign commerce, tugs and barges, drilling platforms used in offshore operations, fishing and associated service vessels, service vessels used in conjunction with off-shore drilling platforms and deep-water mining operations, lighters primarily used to transport cargo within port areas and river systems or carried aboard mother vessels—i.e., LASH and SEABEE lighters and barges, other floating equipment ancillary to the operator's primary vessel operations; (B) containers and flat racks; (C) chassis and trailer equipment; (D) terminal property and cargo handling equipment; (E) other property and equipment; (F) leaseholds, leasehold improvements and Capital Leases; and (G) construction work-in-progress (to provide information by project or by type of capitalized asset cost category). For each asset account within account 330 a separate depreciation or amortization accumulation account must be established except for work-in-progress accounts.

(10) 360 Other Assets.

(i) All assets, including deferred charges, not otherwise provided for above, shall be reported in this account. Separate subaccounts shall be maintained for the various types of assets, including notes and accounts receivable which are not due in the normal course of business within one year of the balance sheet date. Each type of asset shall be further segregated to disclose amounts due from officers and employees of the reporting contractor or operator, officers and employees of affiliated companies, affiliated companies themselves, allowance for the trade in of vessels to the Maritime Administration (where the allowance is to be applied by the agency on behalf of the contractor toward progress payments on new construction) and other assets not otherwise accounted for as miscellaneous assets.

(11) 380 Deferred Charges.

(i) This account shall be used to report expenses, the payment for which the contractor has become liable currently, but which will not be charged to income within one year of the balance sheet date.

(ii) Separate subaccounts shall be maintained to identify the different categories of expense included in this account. These subaccounts may include such items as prepaid insurance; the expense of issuing long-term debt and for absorption of discounts on the stated value of the debt instruments; organization expenses; deferred prepayments and other deferred charges.

(iii) Separate subaccounts shall be maintained for amortization of the various deferred charges included in this account.

(12) 390 *Goodwill and Other Intangible Assets.*

(i) This account shall be used to report the amount of goodwill attributed to the cost of acquiring a business or segment of a business from an unrelated party, as well as the cost of acquiring by purchase, development or other means such intangible assets as patents, copyrights, trade names, operating rights, and similar assets.

(ii) The contractor shall maintain separate subaccounts for the identified intangible assets, including subaccounts to identify their respective amortization.

(B) *Liability Accounts.*

(1) 400 *Notes Payable and Current Portion of Long-Term Debt.*

(i) The amount reported for this account shall include the face value of notes, drafts and other evidences of indebtedness issued by the contractor which are payable on demand or within one year of the balance sheet date.

(ii) Separate subaccounts shall be used to identify different groups of creditors, e.g., banks, insurance companies, officers and employees, affiliated companies and all other creditors.

(iii) The amount of capitalized lease liability maturing during the twelve months following the balance sheet date shall also be reported in this account. A record shall be maintained for each lease agreement, with a description of the type of equipment under lease.

(iv) This account shall not include obligations due within one year which the contractor intends to refinance on a long-term basis or which are payable from restricted funds. Long-term refinancing of short-term obligations means replacement with long-term obligations or equity securities or renewal, extension, or replacement with short-term obligations for an uninterrupted period extending beyond one year from the balance sheet date. Such short-term obligations are to be recorded in account 510, Long-term Debt.

(2) 420 *Accounts Payable.*

(i) The amount reported for this account shall include accounts payable—trade; accounts payable—traffic; pension and welfare funds; accounts payable—Maritime Administration; and other accounts payable.

(ii) Sufficient information shall be maintained to identify individual creditors and the general categories or classification of the liabilities.

(iii) Debts of individual creditors not incurred in the normal course of business shall be identified by group, e.g., officers and employees, affiliated companies, officers and employees of an affiliated company, and other appropriate groupings of creditors not otherwise affiliated in any way with the contractor.

(3) 440 *Accrued Liabilities.*

(i) This account shall be used to report the amount of accrued taxes, accrued operating expenses and other accrued liabilities arising in the regular course of business.

(ii) Subaccounts shall be maintained for each category of liability.

(4) 450 *Other Current Liabilities.*

(i) This account shall include all current liabilities for which no other account has been provided.

(ii) Subaccounts shall be maintained to account separately for each class of current liabilities that arise from transactions with officers or employees, affiliated companies and officers or employees of affiliated companies and must be readily identifiable to facilitate financial reporting requirements.

(5). 470 *Advance Payments and Deposits.*

(i) This account shall be used to report the balance of collections from customers for services not yet provided by the contractor.

(ii) Sufficient accounting information shall be maintained to readily disclose collections from related parties.

(6) 510 *Long-Term Debt.*

(i) This account shall be used to report the noncurrent portion of long-term debt, including mortgage notes payable to the Maritime Administration, U.S. Government insured or guaranteed debt obligations issued under Title XI of the Act, and the face amount of bonds, debentures and other long-term debt not provided for in other accounts.

(ii) Subaccounts shall be maintained to disclose unsecured and secured debt by creditor and by secured asset.

(iii) This account shall also include the balance of the long-term portion of capitalized lease liabilities. Reporting shall be by lease agreement and type of asset leased.

(iv) This account shall also include obligations due within one year which are expected to be refinanced on a long-term basis in accordance with the discussion of Account 400.

(v) Separate subaccounts shall be maintained to record the premiums for each class of funded debt (which shall be amortized over the respective lives of the securities by credit to Account 670, Other Revenue).

(7) 530 Other Liabilities.

(i) This account shall be used to report the balance of all other liabilities maturing after one year from the balance sheet date and for which no other account has been specifically provided.

(ii) Subsidiary accounts shall be maintained for each category or type of liability and accounted for by debtor.

(iii) Reporting of balances outstanding shall show separately amounts due to officers and employees, affiliated companies and officers and employees of affiliated companies.

(8) 560 Deferred Credits.

This account shall be used to report the amount of accumulated deferred income taxes, income or credits for which no other account is specifically provided.

(C) Equity Accounts.

(1) 570 Invested Capital.

This account shall be used to report the amount of capital contribution by an individual in a proprietary company, by partners of a partnership, and by stockholders of a corporation for the par or stated value of the capital stock outstanding and additional paid-in capital.

(2) 580 Treasury Stock.

This account shall be used to report the cost to the contractor of its stock that has been reacquired.

(3) 590 Retained Earnings.

(i) This account shall be used to report the balance of restricted and unrestricted retained earnings for an incorporated business entity. Subsidiary accounts shall be used for each class of restricted earnings.

(ii) Partnerships should make appropriate changes of titles to account for partners accounts.

(iii) For purposes of meeting the Maritime Administration's Dividend Policy for Operators Receiving ODS (46 CFR Part 283), accounting information for unrestricted retained earnings shall be made available to show the income or loss taken into retained earnings, dividends and other distributions paid, and the current balance of unrestricted retained earnings available for distribution.

INCOME STATEMENT

§ 232.5 Income Statement Accounts.

(a) *Accounts Defined.* Each account shall be identified by an account number and an account title followed by a text describing the accounting information to be included in that account.

(b) *Purpose of Income and Expense Accounts.* The income and expense accounts shall show for each reporting period the amount of money the contractor is entitled to receive for services rendered; the income accrued from investments in securities and property; accrued expenses; and income and expense attributable to extraordinary items.

(D) Revenue Accounts.

(1) 600 Vessel Revenue.

(i) This account shall be used to report revenue (including surcharges) from operations. As used here, vessel refers to any asset that qualifies for obligation guarantees pursuant to regulations issued under Title XI of the Act (46 CFR Part 298).

(ii) For contractors who operate vessels in the U.S. foreign commerce with a construction or operating-differential subsidy agreement (CDSA or ODSA), operating revenue attributed to such vessels shall be separately accounted for to report the following: Freight-foreign, freight-coastwise and intercoastal; passenger-foreign, passenger-coastwide and intercoastal; charter revenue; and other voyage revenue. Contractors with an ODSA shall further describe freight and passenger revenue—foreign (including surcharges), U.S. foreign commerce revenue outbound and foreign commerce revenue (transportation between foreign ports). Revenue shall be accounted for to facilitate reporting the source of revenue by trade route or service area.

(iii) All other contractors shall report vessel revenue by category or class, or by operating segment or division if different business segments or operating divisions produce vessel revenue.

(iv) Except as otherwise provided in paragraph (*D*)(*1*)(i) of this section, vessel revenue shall be accounted for following generally accepted accounting principles for the segment of the maritime industry of which the contractor is a part and shall be applied consistently between reporting periods.

(*2*) *640 Operating-Differential Subsidy.*

(i) This account shall be used to report the revenue accrued under provisions of the ODSA.

(ii) Subsidiary accounts shall be used to account for the amount of subsidy accrued by expense classifications to include: Wages of officers and crew; subsistence of officers and crew; maintenance, repairs and upkeep not compensated by insurance; hull and machinery insurance premiums; protection and indemnity insurance premiums; protection and indemnity insurance; deductible expense attributed to illness or injury of crew members; and other expense categories as may be specified in the ODSA.

(iii) Records shall be maintained by vessel for each trade route or service area in which a vessel subject to an ODSA operates.

(iv) If ODS is accrued at substantially different rates developed by the contractor applicable to any year in which final rates have not been agreed to, the difference between the ODS accruals based on billing rates established by MARAD and the ODS accruals based on the contractor's rates shall be disclosed in appropriate footnotes to the balance sheet and to the income statement.

(*3*) *650 Other Shipping Operations Revenue.*

This account shall be used to report revenue earned from shipping activities other than vessel operations. Examples are revenue from pooling agreements, terminal services provided to others, and cargo handling services performed for others; cargo equipment rentals, and repairs to cargo equipment belonging to others; agency fees, commissions and brokerage fees earned.

(*4*) *670 Other Revenue.*

This account shall be used to report revenue from the following sources: Interest bearing securities, dividends from capital stock, gains from the sale of assets not accounted for under the provisions prescribed for account 995; amortization of premium on funded debt, income or loss from subsidiaries, and other revenue not otherwise provided for, including nonshipping operations revenue.

(*E*) *Expense Accounts.*

(*1*) *700 Vessel Operating Expense.*

(i) This account shall be used to report expenses of vessel operations of any kind. As used here, vessel has the same meaning as in paragraph (D)(1)(i) of this section.

(ii) For contractors with an ODSA who operate vessels subject to such an agreement in the U.S.-foreign commerce or worldwide foreign commerce, vessel expense shall be recorded by category as follows: Salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits, such as pension and welfare, vacation payments to unions on behalf of the officers, crew and others, accrued payroll taxes; consumable stores, supplies and equipment, sales taxes, delivery and inspection charges; vessel maintenance and repair expense, including laundry service, inspection services, cost of maintaining expendable equipment and other costs not recoverable from insurance which are integral parts of vessels (including the purchase of permanent equipment and spares required by the classification societies in the United States and its territories and possessions); hull and machinery insurance costs, including premium expense, deductibles and provisions for deductible average losses; protection and indemnity insurance, including premium expense, personal injury and illness deductible average losses and second seamen's surance premiums; premiums for other marine risk insurance involving the vessel and not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; vessel fuel and incidental costs; charter hire expenses, including time, trip, short-term and long-term bareboat charter hire; and other vessel expenses not properly chargeable to other accounts described herein which are incidental to the operation of vessels.

(iii) For contractors who own or operate vessels not subject to an ODSA, vessel expense shall include all direct costs attributable to the operation of vessels. Such expense shall include such expense classifications as generally in use by the segment of the industry with which the contractor is identified. To the extent applicable, the expense classifications mentioned in the preceding paragraph (ii) shall be used.

(iv) Contractors operating vessels to transport cargo or passengers shall maintain appropriate vessel expense records for the purpose of filing vessel operating reports with the Maritime Administration.

(2) *750 Vessel Port Call Expense.*

(i) This account shall be used to report the expenses of a vessel at each port of call. Port call expenses may include: Charges for wharfage and dockage of the vessel, pilotage, entry dues and fees, port dues and taxes; anchor dues; canal tolls; launch hire, and tug hire; dispatch and husbanding fees of agents; and other port and terminal expenses.

(ii) Port charges attributable to the vessel's cargo or passengers are not to be reported in this account. Such expenses shall be reported in Account 760, Cargo Handling Expense.

(3) *760 Cargo Handling Expense.*

This account shall be used to report all expenses directly attributable to the handling of cargo or passengers for a fee. This account shall include: Cost of preparing a vessel to receive cargo; cost of loading and discharging of the vessel's cargo, including stevedoring and equipment and service charges of stevedoring contractors; cost of transporting cargo from the point of delivery into the possession of the contractor to the loading port and from the discharge port to the point of delivery stipulated by the freight agreement if different from the port of discharge; brokerage expense, including commissions paid brokers' agencies for the procurement of passengers or freight; cargo loading plans, demurrage, costs incidental to receiving, delivering and warehousing at freight station facilities; and other charges for cargo services performed by others.

(4) *800 Inactive Vessel Expense.*

(i) This account shall be used to report all expenses incurred during and directly incident to inactive periods of vessels.

(ii) Expenses in this account include: Wages of officers and crew; contributions to crew fringe benefit plans; accrued payroll taxes; subsistence cost of personnel assigned to inactive vessels; consumables other than subsistence items; vessel maintenance expense; vessel repairs; insurance expense; charter hire cost; wharfage and dockage; port expense; and miscellaneous expenses.

(5) *860 Other Shipping Operations Expense.*

This account shall be used to report cost of container leasing, maintenance and repair cost and costs of shipping related activities in which the contractor engages to support vessels, such as terminal operations, cargo equipment, fleet operations, cargo pooling agreements, container loading and other activities that are not accounted for elsewhere and that are ancillary to the contractor's vessel operations.

(6) *900 General and Administrative Expenses.*

(i) This account shall be used to report the administrative and general expenses incurred in the operation of the business.

(ii) This account shall include: Compensation of corporate officers, directors, administrative and service employees; fringe benefits of general and administrative personnel; legal fees; accounting and auditing fees; other professional fees; office and storage expense; utilities; communications expense; data processing expense; dues; subscriptions; entertainment; travel expense; insurance expense; mainte-

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nance and repair expense for office facilities; fixtures and equipment; fees and commissions paid to managing agents; advertising expense; foreign currency conversion; and other expenses to enhance the operation of the business.

(*7*) *940 Depreciation and Amortization Expense.*

(i) This account shall be maintained by class of assets as accounted for in the property and equipment accounts.

(ii) Subaccounts shall be grouped by classifications such as: Vessels; terminals; cargo equipment; office furniture and fixtures; and nonshipping assets.

(*8*) *950 Other Expense.*

This account is to be used to report expenses not chargeable to any other expense account. Such charges may include: Amortization of deferred charges; taxes other than income; debt discount and expense; nonshipping operations expense; organization and preoperating expense and other miscellaneous deferred charges; as well as doubtful notes and accounts receivable.

(*9*) *960 Interest Expense.*

(i) This account shall be used to report all interest expense accrued and charged to income during the period.

(ii) Subaccounts shall be maintained by debt source/contract to provide information needed to fulfill reporting disclosure requirements.

(*10*) *970 Income Taxes.*

(i) This account shall be used to report accrued income tax liability for the current year's operation exclusive of extraordinary items, discontinued operations and the cumulative effect of a change in accounting policy.

(ii) Sufficient accounting records shall be maintained to meet income and expense allocation requirements that may exist as a result of a Capital Construction Fund Agreement entered into under 46 CFR Parts 390 and 391, pursuant to provisions of Title VI of the Act.

(*11*) *990 Cumulative Effect of Change in Accounting Policy.*

(i) This account shall be used to report the cumulative effect of a change in accounting policy that requires a different method of accounting for revenue or expense and that produces a significant change either to the current year's net income or to the retained earnings account of the business.

(ii) A footnote shall be added to the income statement explaining the substance of the old and new accounting methods and the reason supporting the change in accounting policy.

(iii) The amount reported in this account shall be net of all taxes.

(*12*) *995 Income or Loss from Extraordinary Items Net of Taxes.*

(i) Amounts representing gain or loss from extraordinary items, as defined by generally accepted accounting principles customarily applied in the industry of which the contractor is a part, shall be reported in this account. Generally, these transactions would be attributed to insurance proceeds from the total loss of a vessel or catastrophic losses to shore-based facilities, as well as from sales of damaged assets scrapped because of a natural catastrophe, and disposal of assets used primarily in a business segment which is being discontinued.

(ii) Sufficient records shall be maintained to fully describe and account for all aspects of each item reported in this account, and when a firm commitment is made to dispose of an operating business segment, a provision for anticipated gain or loss to be realized in the subsequent period from disposal of assets and winding down of operations of the discontinued segment shall be taken into income in the year the contractor makes the decision.

(iii) Amounts in this account must be net of all taxes including Federal income taxes.

§ 232.6 Financial report filing requirement.

(a) Reporting Frequency and Due Dates. The contractor shall file a semiannual financial report and an annual financial report, in the format referred to in § 232.1(a)(2) of this part which MARAD shall make available to the contractor. This Form MA-172 (Revised) shall be prepared in accordance with generally accepted accounting principles and modified to the extent necessary to comply with this regulation. The annual financial report shall be reconciled to the fina cial statements audited by independent certified public accountants (CPAs) licensed to practice by a state or other political subdivision of the United States, or licensed public accountants licensed to practice by regulatory authority or other political subdivision of the United States on or before December 31, 1970. Both the annual and semiannual financial reports shall be due within 120 days after the close of the contractor's annual or semiannual accounting period. If certified (CPA) statements are not available when required, company certified statements are to be submitted within the due dates, and the CPA statements shall be submitted as soon as available. The respondent may, in place of any Schedule(s) contained in the Form MA-172, submit (1) a schedule or schedules from its audited financial statements, or, (2) a computer print-out or schedule, consistent with the instructions provided in the MARAD formats.

(b) *Certification.* Annual and semiannual reports shall be certified as shown on the oath contained in the reporting formats prescribed as the MA-172 submission.

(c) *Presumption of confidentiality.* MARAD will initially presume that each part of the financial reports or data submitted as prescribed by this Regulation, other than Schedule 101—Identity of Respondent and Schedules 102 and 103, only with respect to the names and titles of directors and principal officers and employees, is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of the reports or data under 5 U.S.C. 552, the submitter will be notified of such request and given the opportunity to comment. The contractor shall claim confidentiality at that time by memorandum or letter stating the basis, in detail, for such assertion of exemption, including but not limited to statutory and decisional authorities. Those parts not so claimed by the submitter to be confidential will be disclosed, and those parts so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control number 2133-0005)

PART 237—REPAIRS TO VESSELS UNDER BAREBOAT CHARTER

Sec.
237.1 Detailed repair specifications; payment and audit.
237.2 Repairs outside United States prohibited; exceptions.
237.3 Consumption entries.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 51, 7 FR 910, Feb. 10, 1942, unless otherwise noted.

§ 237.1 Detailed repair specifications; payment and audit.

All required repairs and betterments (alterations and/or improvements) authorized for the owner's accounts shall be covered by specifications prepared by the charterer in sufficient detail to describe fully all items of work to be performed and shall be paid for by the charterer and allowed for reimbursement to the charterer by the owner at rates not exceeding those which would have been paid had such work been accomplished under an existing master contract between the owner and the repair company, or in the absence of such a master contract at rates not in excess of those then being currently paid by the owner to the repair company or to other repair companies in the vicinity, and the charterer in ordering any such work otherwise than upon a basis of proper competitive bids shall cause full right of audit to be reserved to the owner.

§ 237.2 Repairs outside United States prohibited; exceptions.

No repairs, except as hereinafter provided, shall be performed outside of the Continental limits of the United States without specific authorization in each instance of a representative of the Maritime Administration: *Provided, however,* That such specific authorization shall not be required in the case of repairs of an emergency nature required for the safety of a vessel for its return to the United

States or such work as is required for convoy operating purposes.

§ 237.3 Consumption entries.

All consumption entries involving repairs in foreign ports shall be filed and handled to a conclusion with the United States Customs, including payment of all unremitted duties, such payments to be allowed for reimbursement to the charterer by the owner as an additional cost of such foreign repairs.

PART 246—FORMULAE FOR DETERMINING SEA SPEED OF VESSELS

Sec.
246.1 Method of calculating sea speed of vessels.
246.2 Other provisions.
246.3 Speed formula requiring the substantiating data of § 246.2(b).
246.4 Modification of formulae.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 43, 3d Revision, 24 FR 3793, May 12, 1959, unless otherwise noted.

§ 246.1 Method of calculating sea speed of vessels.

The speeds of vessels shall be based on the methods of calculation described herein.

(a) The basis for calculation shall be the data relating to the vessel as certified in the register of the appropriate Classification Society. The American Bureau of Shipping record shall be used except for vessels not having this classification.

(b) The charts and methods outlined in "Speed and Power of Ships" by D. W. Taylor, shall be the bases for determining effective horsepower required, except that of the four methods given therein for wetted surface determination, the one based on Froude's formula shall be used. Calculations for effective horsepower required shall be made at speed-length ratio of 0.60 and corrected to actual speed-length ratio by the cube rule.

(c) The maximum total continuous horsepower available for propulsion (IHP, SHP, BHP) as determined from the register of the appropriate Classification Society, shall be used as a basis for determining the shaft horsepower available except that for all machinery of a steam reciprocating type, 0.90 mechanical efficiency shall be used with the IHP. The effective horsepower available to be used in conjunction with the speed calculations for single screw vessels shall be determined by multiplying the shaft horsepower available by an appropriate factor based on vessels of 450' length. For all vessels constructed subsequent to January 1, 1925 this factor shall be 0.50. For all vessels constructed prior to January 1, 1925 this factor shall be 0.50 for vessels having 6,000 SHP or more, 0.47 for vessels having power less than 6,000 SHP but more than 3,000 SHP, and 0.44 for vessels having 3,000 SHP or less. The above factors are to be corrected for length with an increase or decrease of 0.1 per 150' of length that the vessel is greater or less than 450'. (For new vessels 0.4 at 300 feet and 0.6 at 600 feet, etc.)

(d) For twin screw vessels the foregoing factors for single screw vessels shall be reduced by 10 percent.

§ 246.2 Other provisions.

(a) At any time the Maritime Administrator has the privilege to request a trial in deep water, either on a standard deep water measured mile or other course approved by the Maritime Administration. On this trial, the operator shall determine, to the satisfaction of representatives of the Maritime Administration, the speed at which the vessel runs when the engines are developing 80 percent of their normal power and the vessel has a mean draft corresponding to its assigned freeboard. All expenses, etc., in connection with such a trial shall be borne by the Operator.

(b) Notwithstanding the provisions herein, the Maritime Administrator will consider the request of any owner for a waiver of the speed required herein and the acceptance of a speed certificate computed in accordance with § 246.3, upon submission by the owner of pertinent applicable data proving to the satisfaction of the Administrator that the speed of the vessel, as determined in accordance with § 246.3, is not in excess of fa and reasonable speed satisfactory to the Administrator but the determinations of the Administrator, in this respect, shall be final and conclusive.

§ 246.3 Speed formula requiring the substantiating data of § 246.2(b).

The speed of vessels calculated under this section shall be calculated on the same basis as set forth in § 246.1 (a), (b), (c), and (d), except for the following:

(a) Section 246.1(c) is modified to eliminate the correction for vessels constructed prior to January 1, 1925.

(b) Upon request and the submission by the owner of pertinent applicable data, such as standardization trial and self-propelled model test results, the Maritime Administrator shall give consideration to modifications of results obtained by the foregoing method but the extent to which such data may affect the results shall be determined by the Maritime Administrator.

§ 246.4 Modification of formulae.

The formulae set forth herein are subject to modification, as may be determined hereafter.

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

PART 249—APPROVAL OF UNDERWRITERS FOR MARINE HULL INSURANCE

Sec.

249.1 Purpose.
249.2 Policy.
249.3 Amounts of insurance.
249.4 Eligibility.
249.5 Eligibility criteria.
249.6 Application procedures.
249.7 Approval.
249.8 Limitation on risk.
249.9 American market participation.
249.10 Non-Discrimination policy.
249.11 Confidentiality.
249.12 Waivers.

AUTHORITY: Sec. 204(b), 1109, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1279b); 49 CFR 1.66.

SOURCE: 53 FR 23119, June 20, 1988, unless otherwise noted.

§ 249.1 Purpose.

This part prescribes certain regulations governing the placement of marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended (Act). (46 U.S.C. 1271-1279)

§ 249.2 Policy.

(a) It is the policy of the Maritime Administration (MARAD) that companies subject to requirements for the placement of marine hull insurance shall be afforded the widest possible opportunity to obtain the necessary coverage, with minimal regulatory constraints, with financially sound underwriters, and that such placement should not create any unnecessary impediments to competitive maritime operations.

(b) It is also the policy of MARAD to require owners of vessels with ODS or Title XI obligation guarantees to allow the American marine insurance market the opportunity to compete for the marine hull insurance on their vessels before such insurance is placed. Consistent with sound business judgment, owners will be expected to place their insurance with the American market to the maximum extent possible when the rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters.

§ 249.3 Amounts of insurance.

MARAD will inform the owner of each vessel that is subsidized or covered by vessel obligation guarantees, prior to initial placement and at least annually thereafter, of the minimum amount of insurance required to be placed on the vessel.

§ 249.4 Eligibility.

In General. All required marine hull insurance must be placed with:

(a) Underwriters licensed to do business in one or more of the United States;

(b) Underwriters at Lloyds;

(c) Member companies of the Institute of London Underwriters; or

(d) Other underwriters specifically approved in advance by the Maritime Administration.

§ 249.5 Eligibility criteria.

(a) *U.S. Underwriters.* Underwriters licensed to do business in a state are eligible to participate without further consideration, provided they have at least a B security rating, as published in the latest edition of A.M. Best's Insurance Reports, and the amount of insurance does not exceed the limitation on risk prescribed in § 249.8.

(b) *Foreign Underwriters.* (1) Underwriters at Lloyds are eligible to participate without further consideration.

(2) Underwriters which are members of the Institute of London Underwriters (ILU) (i.e., *member* companies, not parents or affiliates of the member companies) are eligible to participate without further consideration, provided that the ILU member company actually underwriting the risk maintains a trust fund in the United States for the benefit of its U.S. policyholders in an amount at least equal to the minimum provided in § 249.7(d), and the amount insured does not exceed the

limitation on risk prescribed in § 249.8. Parent companies or affiliates of the ILU member companies are treated as other foreign underwriters under subsection (c) of this section.

MARAD reserves the right to review this eligibility at any time.

(c) *Other Foreign Underwriters.* Foreign underwriters, other than those specified in paragraphs (b) (1) and (2) of this section, may also be eligible to participate in the writing of marine hull insurance on MARAD program vessels, if approved to do so in accordance with the procedures contained in §§ 249.6 and 249.7.

(d) *Documentation of eligibility.* It shall be the responsibility of the vessel owner and its broker to ensure that the requirements of this section are met, and they should be able to provide MARAD, upon request, with documentation to that effect.

§ 249.6 Application procedures.

(a) MARAD may grant specific approval for underwriters described in § 249.5(c) to participate in the writing of marine hull insurance on MARAD program vessels, only in advance of any actual placement.

(b) Only those foreign underwriters who have obtained a high rating (A or comparable) from an accepted international rating service may apply, and if approved, such approval will be contingent upon continued maintenance of such rating. MARAD will make available to interested parties the names of any accepted international rating service.

(c) To seek approval, an applicant shall submit to MARAD:

(1) Certified financial data for the five previous years in sufficient detail to enable MARAD to assess the financial strength and solvency of the applicant. Normally, this would be the same data which the underwriter must submit to the regulatory agency in its country of domicile. However, MARAD may request additional data if the applicant's submissions are considered inadequate;

(2) A comprehensive description and English language version of the insurance regulatory regime that is in place in the insurer's country of domicile. (After review, MARAD may contact the foreign national regulatory authorities, as appropriate);

(3) An affidavit in writing, executed by an agent of the applicant who is a domiciliary of the United States, and supported by appropriate documentation, to demonstrate that there is nothing in either law or practice to preclude a U.S. insurer from obtaining the same access to the applicant's home market as the applicant is seeking to the U.S. market, and

(4) The details of its reinsurance program, if it wishes to write any risks in excess of five percent of its policyholders' surplus. These details shall be accompanied by a statement that clearly demonstrates the special circumstances and good cause by which MARAD should be persuaded to modify its general policy on limitation of risk described in § 249.8.

§ 249.7 Approval

(a) Approval of the applicant will be based upon an assessment of the applicant's financial condition and solvency, its rating by an accepted international rating service, suitability of the regulatory regime under which the applicant must operate in its home country, and on the principle of reciprocal non-discrimination. MARAD will not approve access to the U.S. hull insurance market, if U.S. insurers are denied similar access to the hull insurance market in the applicant's home country.

(b) MARAD will publish in the FEDERAL REGISTER each Notice of Application received from foreign underwriters described in § 249.5(c), affording interested persons an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which might exist in the applicant's country of domicile.

(c) In granting approval, MARAD will consider all materials available to it, and may impose reasonable terms and conditions upon any such approvals granted.

(d) Upon approval, applicant will be required to establish and maintain for the benefit of its U.S. policyholders a U.S. trust fund in the amount of at least $1.5 million, such amount to be reviewed periodically (but not more frequently than annually), and adjusted as appropriate. This requirement may be satisfied by means of an appropriate irrevocable letter of credit.

(e) All policies, at the time of issuance, shall contain the latest American Institute of Marine Underwriters' forms, or equivalent, as approved by MARAD.

(f) All policies issued by foreign underwriters shall include New York Suable Clause or Service of Suit (USA) Clause.

(g)(1) To maintain approval, foreign underwriters, other than those specified in § 249.5(b), shall, in addition to retaining the high rating from an accepted international rating service, file annual financial statements in the same level of detail as required for original approval. Such statements shall be due within 120 days after the close of the underwriter's annual accounting period.

(2) In addition, a new affidavit concerning the lack of discriminatory laws or practices related to hull insurance in the underwriter's home market, as described in § 249.6(c)(3), shall be filed annually at the same time as the financial statements.

(h) Since there is no annual reapproval required, foreign underwriters which are approved shall agree to submit additional information, as requested by MARAD, if it has reason to believe there has been a change in the underwriter's financial status or business practices which could affect the quality of its security. Failure to provide such information on a timely basis could result in immediate withdrawal of the authorization to write hull insurance on MARAD program vessels.

§ 249.8 Limitation on risk.

(a) Underwriters may take a line on any single risk in excess of five percent of its Policyholders' Surplus only with the prior approval of MARAD. MARAD will grant such approval to certain underwriters only in special circumstances, and for good cause shown. The standard to be applied in such cases shall be that the underwriter's *net* retention on any single risk may not exceed five percent of its Policyholders' Surplus, the gross amount of the risk may not exceed its surplus, and the reinsurers must have a high (A or comparable) rating from an accepted international rating service.

(b) The vessel owner shall also provide MARAD with a mortgagee's interest policy in an amount equal to the difference between the net retention and the amount of the line taken by such underwriter.

§ 249.9 American market participation.

(a) Owners of vessels receiving ODS or Title XI vessel obligation guarantees, or their brokers, shall offer to the American marine insurance market the opportunity to compete for the placement of marine hull insurance on each vessel. Consistent with sound business judgment, owners will be expected to place their insurance with the American market to the maximum extent possible when the rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters. MARAD will make available a list of approved American underwriters and their capacities.

(b) In the event that less than 50 percent of the placement is made with the American marine insurance market, the owners, or their brokers, shall file an affidavit confirming that the risk has been offered to a substantial portion of the American market. The affidavit shall list the American underwriters to which the risk was offered, and such underwriters shall account for at least 50 percent of the approved American market capacity, or 75 percent in the event that more than 75 percent of the risk was placed in foreign markets.

(c) Failure to comply with (a) or (b), above, may result in MARAD requiring that the risk be reoffered and that the existing placement be modified, as deemed appropriate.

§ 249.10 Non-discrimination policy.

To administer effectively the policy regarding non-discrimination against U.S. insurers in other countries, as described in §§ 249.6(b)(3) and 249.7(a), MARAD seeks the assistance of the American marine insurance industry to provide information at the time of publication of Notice of Application described in § 249.7(b) concerning the existence of any discriminatory laws or practices in the marine hull insurance market abroad. Upon receipt of such information, MARAD will take whatever action it deems appropriate.

§ 249.11 Confidentiality.

(a) If the data submitted under this rule contain information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data are submitted. The claim shall be made in a letter contained in a sealed enveloped marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential.

(b) In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: (1) That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority; and (2) that measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise becomes available to the public, why such disclosure or availability does not compromise the confidential nature of the information.

(c) In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration.

(d) If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

§ 249.12 Waivers.

The provision of this part may be waived in writing, for special circumstances and good cause shown, provided the procedures adopted are consistent with the Act and with the intent of these regulations.

PART 250—PARTICIPATION BY VESSELS BUILT WITH CONSTRUCTION-DIFFERENTIAL SUBSIDY IN THE CARRIAGE OF OIL FROM ALASKA IN THE DOMESTIC TRADE

Sec.
250.1 Purpose.
250.2 Definitions.
250.3 Applications.
250.4 Approval.
250.5 Extent of participation.
250.6 CDS repayment.

Authority: Secs. 204(b), 506, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b) and 1156). Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036), and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973).

Source: 42 FR 33036, June 29, 1977, unless otherwise noted.

§ 250.1 Purpose.

This part prescribes regulations implementing section 506 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1156), with respect only to the conditions for approval of participation by vessels over 100,000 dwt built with CDS, pursuant to authority of Title V of that Act, in the carriage of Alaskan oil in the Alaska-Panama Canal trade, which do not apply to the Alaska-West Coast trade or the Panama Canal-Atlantic/Gulf Coast trade.

§ 250.2 Definitions.

For the purpose of this part—

(a) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) "CDS" means construction-differential subsidy, as provided for in Title V of the Act.

(c) "Competitor" means any owner or operator of an American-flag vessel, that has been built or is being constructed without CDS, and is eligible for operation in the domestic trade, pursuant to section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883).

(d) "Maritime Administrator" means the Maritime Administrator, Department of Transportation, or his authorized representative to whom is duly delegated the authority, from time to time, to perform the functions of the Maritime Administrator.

(e) "Alaska-West Coast trade" means the carriage of Alaskan oil by United States-flag tank vessels from Alaska to receiving facilities or vessels in ports or offshore the States of California, Oregon and Washington.

(f) "Alaska-Panama Canal trade" means the carriage of Alaskan oil by United States-flag tank vessels from Alaska to receiving facilities or vessels located in waters on the Pacific Ocean side of the entry to the Panama Canal for transshipment to United States-flag tank vessels for carriage through the Panama Canal to receiving facilities or vessels in ports or offshore on the Atlantic or Gulf Coasts of the United States.

(g) "Panama Canal-Atlantic/Gulf Coast trade" means the carriage of Alaskan oil by United States-flag tank vessels through the Panama Canal from receiving facilities or vessels on the Pacific Ocean side of the entry to the Panama Canal to receiving facilities or vessels in ports or offshore on the Atlantic or Gulf Coasts of the United States.

(h) "Suitable vessel" means a tank vessel that is in compliance with all applicable requirements of United States law and of at least 100,000 deadweight tons, if engaging in the carriage of Alaskan oil in the Alaska-Panama Canal trade.

§ 250.3 Applications.

The owner or bareboat charterer of a tank vessel of a least 100,000 deadweight tons built with CDS may make application to the Maritime Administrator for permission to carry oil in the Alaska-Panama Canal trade. A separate application with respect to each vessel for which such approval is requested shall be submitted and shall disclose the following information:

(a) The name and description of the vessel and the MA/MSB Contract numbers relating to CDS;

(b) The number of voyages and length of time the vessel would operate in the trade, as limited by the provision of § 250.5;

(c) The name of the existing time charterer, if any;

(d) All available information to support the applicant's assertion that suitable vessels of a competitor would not be available for the prospective voyage or voyages.

§ 250.4 Approval.

The Maritime Administrator shall publish in the FEDERAL REGISTER notice of all applications to participate in the Alaska-Panama Canal trade, and shall consider a protest in writing by a competitor, if received within five working days after the date of publication in the FEDERAL REGISTER. The Maritime Administrator shall advise the applicant of the protest by telephone or telegram and shall allow the applicant three working days to make a response in any manner acceptable to the Maritime Administrator. Within five working days of the due date for the applicant's response, the Secretary shall advise the applicant, as well as those submitting protests, of the action taken, with a concise explanation of such action in writing.

§ 250.5 Extent of participation.

Pursuant to section 506 of the Act, the Maritime Administrator shall not approve an application where the result would be to allow a vessel of the applicant to participate in the trade for a period exceeding six months in any consecutive 12-month period, commencing with the entry date of the applicant's vessel for the carriage of Alaskan oil in the Alaska-Panama Canal trade. The application may include a request for advance approval for participation in that trade for a second and third period, if there is an interval of at least six months between periods of operation in the domestic trade.

§ 250.6 CDS repayment.

Pursuant to section 506 of the Act, the owner of each vessel subject to the provisions of this Part 250 shall pay to the Maritime Administrator an amount which bears the same proportion to the CDS paid by the Secretary of Transportation as the temporary period of operation in the trade bears to the entire life of the vessel. The temporary period of operation in the trade is the time a tank vessel is actually under charter, pursuant to the terms of the charter agreement. Arrangements for the repayment of CDS must be made with the Maritime Administration prior to the granting of any approval under this part.

PART 251—APPLICATION FOR SUBSIDIES AND OTHER DIRECT FINANCIAL AID

Sec.

251.1 Applications for constructional-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.
251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.
251.21 Applications under sections 803, 804, 805 (a) and (d), and 605(b), Merchant Marine Act, 1936.
251.31 Charges for processing applications for authorization to transfer ownership of ships built with construction-differential subsidy.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

§ 251.1 Applications for construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.

(a) Applications under section 501 of the Act for subsidy to aid in the construction of new vessels or the reconstruction of existing vessels, to be operated in the foreign commerce of the United States, shall be filed on form FMB-8 in accordance with the instructions annexed thereto.[1]

(b) Applications for aid in the construction of new vessels to be operated in domestic trade shall be filed on Form VA-9 in accordance with the instructions annexed thereto.[1]

APPENDIX NO. 1—POLICY

1. *To the maximum practical extent as determined by the Maritime Subsidy Board* applicants for construction-differential subsidy (CDS) under Title V of the Merchant Marine Act of 1936, as amended, shall duplicate designs of ships previously approved by the Board for Subsidized Ship Construction. Such duplication contemplates retention of: Hull form; major structure, i.e., shell, transverse bulkheads, decks, girder systems; etc.; machinery horsepower and arrangement; and arrangement of deck house. However the Board will permit modifications such as changes to reefer cargo capacity, deep tankage, and cargo gear in a manner so as not to disrupt the basic configuration of the ship and without sacrificing gains that can be made from group production. New ship designs will be considered from any operator who has already constructed sufficient ships of a given design to have optimized the economy of standardized ship construction, when the applicant feels that a new design is necessary in exceptional cases and justifies this need to the Board. Where the Board concludes contrary to an applicant that a previously developed design can be satisfactorily adapted to requirements of the intended service at a substantial saving compared with building to a new design, invitations to bid shall be issued for both the standard design and the custom design of the owner's preference. Construction-differential subsidy will be based on whichever design requires the least subsidy.

2. The Board may require such variations from designs of ships previously approved as are necessary to optimize the economic utilization of mechanization and labor saving equipment with the potential of reducing operating-differential subsidy (ODS). Other nonstandard equipment or shipbuilding components shall be eligible for CDS, only if (a) their effect is to decrease the total sum of such CDS and ODS projected over the life of a ship, or (b) when it can be demonstrated with reasonable certainty that the added investment will produce a return to the owner of at least 10 percent per annum after taxes over the life of the investment.

3. Value engineering provisions will be included in all construction-differential subsidy contracts and construction contracts. Value engineering items considered mandatory by the Board prior to or during the development of the bidding plans and specifications and during the actual ship construction period shall be incorporated in the plans and specifications or incorporated in the ship. If the mandatory items are not ac-

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[1] Copies of forms referred to may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C.

ceptable to the owner the difference in cost, as determined by the Board, between the value engineered and the installed item will be borne by the owner. This paragraph shall not be construed (a) as revising the present appeal rights of the shipowner, or (b) as imposing upon the shipbuilding contractor any requirement for employment of a specific number of value engineering personnel.

4. Subsidy for changes under the construction contract will be allowed only when the net effect of the change will with reasonable certainty (a) comply with the standard in 2 (a) or (b) above, (b) correct a deficiency in design which is clearly essential, or (c) comply with a change in the requirement of a regulatory body which becomes effective after 30 days preceding bid opening. Any changes desired by the owner which do not adversely affect the safe, efficient or economical operation of the ship will be permitted, but without the benefit of subsidy. Subsidy for changes under category 2(b) shall be based on an estimate as to what the work would have cost if it had been included in the bidding specifications.

5. Post-contract engineering costs incurred by the owner for engineering review and plan approval will be subsidized within a ceiling. The owner's expenses for such engineering and plan approval shall be limited for subsidy purposes to a maximum of 2 percent of the low bid for each of one ship in each contract. This limitation shall apply to liner cargo vessels of the break bulk type with no more than twelve passengers, but including special features such as mechanization, container carrying devices, special cargo handling equipment, refrigeration spaces and special deep tanks, etc. This upper limit shall be adjusted downward to take into account features including, but not limited to, standardized design, successive flights of ships in the same yard, or successive flights of ships in different yards.

6. Construction-differential subsidy on owner's engineering expenses for inspection when only one ship is being built shall be limited to an amount equal to 1.3 percent of the bid price. For multiple ship construction the amount subsidizable will be 1.3 percent of the contract price per ship plus an additional increment of 0.36 percent for each vessel beyond the first. For example, the subsidizable amount for inspection on a four ship contract would be 1.3 percent plus 1.08 percent (0.36×3) or 2.38 percent times the cost of the each of four ship bid price.

This limitation shall apply to liner type cargo vessels of the break bulk type with no more than 12 passengers but including special features such as mechanization, container carrying devices, special cargo handling equipment, refrigeration spaces and special deep tanks, etc. This upper limitation shall be adjusted downward to take into account features including, but not limited to, standardized design, or other vessels for the same owner and in the same shipyard.

7. Interior decorators' fees will be limited to a maximum of $10,000 per contract.

8. Construction-differential subsidy will not apply to owner furnished equipment. All material or equipment to which construction-differential subsidy shall apply must be included in the plans and specifications upon which the competitive ship construction bids are based or included in authorized changes under contract.

9. Notwithstanding any of the foregoing limitations on subsidy the Board will in exceptional cases authorize subsidy or research and development grants for new ship concepts or individual ship features whose economic justification lie in the possibility of future major advances in ship construction or operation and which in the Board's judgment may lead to greater efficiency and economy.

APPENDIX NO. 2—STATEMENT OF GENERAL POLICY

1. The appropriations available for the payment of construction-differential subsidy by the Maritime Subsidy Board necessarily are limited. Present replacement program schedules for individual operators repeatedly have been revised and extended in recent years in accordance with the operating-differential subsidy contracts. It is possible that further delay will occur in the replacement of some of the vessels required to be replaced pursuant to the existing contractual obligations of those operators under operating-differential subsidy contracts with the Government. These standards are designed to provide better guidance for the operators and the Government in making the judgments necessary in selecting from among competing applications for limited funds. This policy will apply to requests for and allocations of appropriations for fiscal year 1967 and thereafter. It furthermore applies only to awards of financial assistance in the construction of vessels for liner service.

2. (a) To provide for the optimum development of the American Merchant Marine in number of vessels and in shipping capability, the Board will allocate federal financial assistance for construction or reconstruction of vessels so as to give priority to those proposals which, having met all requirements of Title V, Merchant Marine Act, 1936, will in the Board's opinion utilise such assistance to obtain the greatest shipping capability and productivity possible. In making its determinations under this policy the Maritime Subsidy Board will take into consideration the following factors:

(1) Number of vessels proposed for construction by the applicant.

(2) Cubic and deadweight capacities and speed of the proposed vessels.

(3) Proposed cargo handling equipment and techniques for transfer of cargo in and out of vessels and to and from inland points. In this connection, the applicant will be required to set forth the estimated rate of loading and of discharge of cargo, as well as the adaptability of the proposed vessel to integrated systems of transportation embracing both ocean and overland transportation.

(4) Estimated domestic cost of construction.

(5) Estimated revenues and cost of operation; and with respect to wage cost, the proposed manning schedule on the proposed vessels.

(6) The applicant's intention to seek operating subsidy and if so, the duration and amount of such subsidy payments.

The Board will weigh the above factors in such a fashion as will measure the productivity of the vessel (i.e., its carrying capacity, speed, and rate of cargo handling) against the Government's cost of construction and operating aid. The Board will award aid (so far as funds are available) for the construction of those vessels otherwise eligible, as will give the greatest productivity for each dollar of Government aid.

(b) The Board reserves for determination at a later time standards to be applied in the allocation of federal financial assistance for the construction of vessels to be used in non-liner operations.

APPENDIX NO. 3—CONSTRUCTION-DIFFERENTIAL SUBSIDY FOR MACHINERY AND ELECTRIC PLANT SPARE PARTS

1. The total cost of machinery and electric plant spare parts (whether shore-based or carried aboard ship), which are in addition to those spare parts required by all cognizant regulatory bodies (including ABS, Coast Guard and the FCC), which shall be eligible for CDS, shall not exceed the amount determined by application of the percentages shown in the Table below:

2. TABLE 2.—COST OF ADDITIONAL SPARE PARTS ELIGIBLE FOR CDS

[Footnotes at end of table]

Cost class	Type of equipment covered [2]	Cost of spare parts [1]
12	Galley, pantry, and utility space equipment.	1.0
15	Ventilation and heating	2.0
17	Air-conditioning machinery	3.0
18	Hull piping (engineering)	2.0
19	Cargo oil system	2.0
20	Hull piping (domestic)	2.0
21	Deck machinery	8.0
22	Electric generation and distribution.	5.0
23	Electronics	5.0
25	Main engine	3.0
26	Shafting and propellers	6.0
27	Condensers	1.0
28	Boilers	1.0
29	Fuel oil service piping	4.0
30	Steam piping	4.0
31	Feed, condensate, circulating, and drain piping.	4.0
32	Lube oil piping	4.0
33	Salt water evaporator system	7.0
34	Feed heaters and other heat exchangers.	3.0
35	Pumps	13.0
36	Miscellaneous auxiliaries	7.0
39	Instruments and gauges	15.0
40	Engineers workshop	1.0

[1] Expressed as percentage of base cost of the equipment in each cost class.

[2] Cost of spare anchor, propeller, or tailshaft is not included in this allowance and is handled as a separate Maritime Subsidy Board action.

3. This regulation shall be implemented in accordance with the following procedures and guidelines:

(a) The allowance is to be calculated by the Maritime Administration and will be included in the contract price for all new contracts for which CDS is awarded after this regulation becomes effective. For ships under contract on the effective date of this regulation, the regulation shall form the basis for permitting a change under contract for additional spare parts to be subsidized, provided that a request for CDS participation is submitted to the Maritime Administration prior to delivery of the applicable ship.

(b) The allowance is to be fixed and will not be escalated under the escalation provisions (if any), of the contract. For changes to existing contracts, the allowance will be computed based on the original contract price.

(c) An audit, as deemed appropriate by the Maritime Administration, will be made at the end of the contract to determine total spare parts expenditures and a change under contract will be issued if actual expenditures are less than the allowance. The audit will be based on Maritime Administration review of a priced list, by shipyard purchase orders, of spare parts furnished pursuant to this § 251.1.

(d) Shipping and shipyard handling costs are to be included in the allowance.

(e) If the cost of material in a cost class is increased or decreased by reason of a change under contract, the total spare parts allowance will not be increased or decreased unless included as part of the change under contract.

(f) The actual expenditure of funds for spare parts by the Owner need not correspond to the percentages shown in the table which are used to determine the total amount eligible for CDS.

(g) An owner may exceed the limit set by this regulation, provided such excess is for his sole account.

(Approved by the Office of Management and Budget under control number 2133-0020)

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[G.O. 11, 2 FR 2205, Sept. 22, 1937, as amended by Amdt. 1, 24 FR 7832, Sept. 29, 1959; 30 FR 11756, Sept. 15, 1965; 30 FR 14598, Nov. 24, 1965; 43 FR 1622, Jan. 11, 1978; 47 FR 25530, June 14, 1982]

§ 251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.

(a) Applications under title VI of the Act for subsidy to aid in the operation of vessels in the foreign commerce of the United States shall be filed on Form MA-632 in accordance with the instructions annexed thereto.

(b) Copies of Form MA-632 may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C., 20590.

(Approved by the Office of Management and Budget under control number 2133-0017)

[G.O. 13, Rev., 36 FR 11033, June 8, 1971, as amended at 47 FR 25530, June 14, 1982]

§ 251.21 Applications under sections 803, 804, 805 (a) and (d), and 605 (b), Merchant Marine Act, 1936.

Form VI-B of instructions is the required form for the preparation of applications under sections 803, 804, 805(a) (see procedure for 805(a) applications covered in Part 380 of this chapter (General Order 86)) and (d), and 605(b), Merchant Marine Act, 1936 (49 Stat. 2012, 2013, 2003; 46 U.S.C. Sup., 1221-1223 (a), (d), 1175(b)).[1] All applicants for operating differential subsidies who file such applications are required to comply therewith.

[G.O. 14, 2 FR 2295, Sept. 28, 1937, as amended at 23 FR 7538, Sept. 27, 1958]

§ 251.31 Charges for processing applications for authorization to transfer ownership of ships built with construction-differential subsidy.

(a) Applications for an amendment or addendum to construction-differential subsidy contracts to provide for the sale of a vessel built under Title V, Merchant Marine Act, 1936, as amended, to a buyer who assumes the obligations under said contracts, shall be filed with the Secretary, Maritime Subsidy Board, Washington, D.C. 20590.

(b) *Fee.* Each such application shall be accompanied by the sum of $200, which sum will be retained to recover the cost of processing the application.

(Sec. 4; 5 U.S.C. 553)

[G.O. 106, 31 FR 3397, Mar. 4, 1966]

PART 252—OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN WORLDWIDE SERVICES

Subpart A—Introduction

Sec.

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252.20 Subsidized and nonsubsidized voyages.
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252.22 Substantiality and extent of foreign-flag competition.

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[1] Copies of form referred to may be obtained from the Secretary, Maritime Subsidy Board, Washington, D.C.

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252.41 Subsidy billing procedures.
252.42 Appeals procedures.

AUTHORITY: Secs. 204(b), 207, 211, 601, 602, 603 and 605, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173 and 1175); 49 CFR 1.66.

SOURCE: 40 FR 43490, Sept. 22, 1975, unless otherwise noted.

Subpart A—Introduction

§ 252.1 Purpose.

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171-1176 and 1178-1181) governing operating-differential subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

[51 FR 40425, Nov. 7, 1986]

§ 252.2 Policy.

The policy of the Merchant Marine Act, 1936, as amended, is set forth in section 101 thereof, as follows:

> It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

§ 252.3 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) *Maritime Administrator* means the Maritime Administrator, Department of Transportation of the Department of Transportation.

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Bulk cargo vessel* means a vessel built to carry solid, liquid or gaseous commodities that in normal shipment are contained only by the vessel's structure.

(e) *Citizen of the United States* includes a corporation, if all directors of the corporation are citizens of the United States, partnership or association but only if it is deemed a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).

(f) *Contracting Officer* means the Associate Administrator for Maritime Aids.

(g) *Fiscal year* means any annual period beginning on July 1 and ending on June 30.

(h) *Foreign-flag competition* means those foreign-flag vessels deemed by the Board to be competitive with the subsidized vessel.

(i) *Gross revenue* means the operator's total gross receipts from cargoes or fixtures of a vessel or both.

(j) *Operating-differential subsidy agreement* (*ODSA*) means the agreement entered into by the operator and the United States government for the payment of operating-differential subsidy.

(k) *Operating-differential subsidy* (*ODS*) means, except as the operator and the United States government should agree upon a lesser amount, the excess of the cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel, or such sums as the Board may determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country.

(l) *Operator* means any individual, partnership, corporation or association that contracts with the United States government under Title VI of the Act to receive ODS.

(m) *Reduced crew period* means any period in port beginning on the day that a vessel's normal crew complement is reduced by 4 or more men and division of wages is not paid for the missing men and ending on the day prior to the day that the vessel's crew complement is restored to not more than 3 men less than the normal crew complement, or division of wages is paid for the missing men, or the vessel is temporarily or permanently withdrawn from subsidized service, whichever occurs first.

(n) *Region Director* means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(o) *Subsidized service* means the operation of a vessel other than in the coastal or intercoastal trade in accordance with the terms and conditions of the ODSA.

(p) *Subsidy rate* means the method adopted by the Board for determining the amount of ODS that is to be paid for an item of subsidizable expense.

(q) *Subsidized vessel* means a vessel covered by an ODSA.

(r) *U.S. foreign commerce* means commerce or trade between the United States, its territories or possessions, or the District of Columbia and a foreign country.

(s) *Vessel* means subsidized vessel unless otherwise specified.

(t) *Voyage day* means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of the ODSA.

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 30442, May 8, 1980; 51 FR 40425, Nov. 7, 1986]

§ 252.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived, in writing, by mutual agreement of the parties, in keeping with the circumstances then present, provided that the procedures adopted are consistent with the Act and with the intent of these regulations.

[51 FR 40425, Nov. 7, 1986]

Subpart B—Eligibility and Agreement

§ 252.10 Eligibility.

Any citizen of the United States may apply to the Board for the payment of ODS for the operation of a bulk cargo vessel in an essential service in the U.S. foreign commerce.

§ 252.11 Application forms.

Application forms may be obtained from the Secretary, Maritime Administration, Department of Transportation, Washington, DC 20590.

§ 252.12 Approval.

The Board may not approve an application for the payment of ODS until the Board has determined, in addition to other statutorily required determinations, that:

(a) The operation of the vessel in an essential service is required to meet foreign-flag competition and to promote U.S. foreign commerce;

(b) The vessel was built in the United States, or built foreign and determined to be eligible for ODS pursuant to the applicable law at the time it was built or acquired, and the vessel is documented under the laws of the United States.

(c) The applicant owns or leases, or can and will build or purchase or lease a vessel or vessels of the size, type, speed and number, and with the proper equipment required to enable him to operate in an essential service in such manner as may be necessary to meet competitive conditions and to promote U.S. foreign commerce;

(d) The applicant possesses the ability, experience, financial resources and other qualifications necessary to enable him to conduct the proposed operation of the vessel to meet competitive conditions and promote U.S. foreign commerce;

(e) The granting of the aid applied for is necessary to place the proposed operations of the vessel on a parity with the vessels of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of the Act;

(f) The vessel is of steel or other acceptable metal, is propelled by steam or motor, and is as nearly fireproof as practicable; and

(g) The vessel is constructed in accordance with plans and specifications approved by the Board and Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or approved by the Board and Navy Department as otherwise useful to the United States in time of national emergency.

[40 FR 43490, Sept. 22, 1975, as amended at 51 FR 40425, Nov. 7, 1986]

§ 252.13 Contract.

Upon approval by the Board of an application for ODS, the applicant and the United States may enter into an ODSA.

Subpart C—Operation

§ 252.20 Subsidized and nonsubsidized voyages.

(a) *Subsidized voyages*—(1) *Minimum operation*. The operator shall operate each subsidized vessel for a minimum of 335 days each year in the worldwide carriage of bulk cargo in the U.S. foreign commerce and in the carriage of such cargo between foreign ports.

(2) *Commencement*. The first voyage shall commence at the time provided in the ODSA. All subsequent voyages shall commence at 0001 hours local time of the day following the day of termination of the previous voyage or, in the event that a reduced crew period follows such termination, at 0001 hours local time of the day following the day on which such reduced crew period terminates.

(3) *Termination*. A voyage shall terminate at 2400 hours local time:

(i) In a U.S. port, on the day of completion of (*a*) paying off the crew from foreign articles, (*b*) discharge of cargo at the last U.S. port of discharge, or (*c*) voyage repairs, whichever event occurs last;

(ii) In a foreign port, on the day (*a*) of completion of the discharge of cargo if the vessel loads cargo in such port of discharge, (*b*) prior to the day of commencement of loading cargo if the vessel departed its last port of cargo discharge in ballast;

(iii) In the case of special circumstances such as strike or lack of cargo activity, on the day approved by the Region Director upon request for a variance by the operator; or

(iv) On the final voyage, on the day provided in the ODSA for termination of the final voyage.

(4) *Periods of reduced crew, idleness, delay or lay-up*—(i) *Report by operator*. The operator shall report promptly to the Region Director any reduced crew period and any period of idleness, lay-up or delay occurring during or between voyages and the facts and circumstances relating to any such period.

(ii) *Region Director's finding*. The Region Director shall make a finding as to whether the period reported by the operator could have been avoided through the efficient and economical operation of the vessel and whether operating costs were reduced to a minimum in accordance with sound commercial practice. The Region Director shall, by means of a written report, promptly advise the operator and Contracting Officer of his finding.

(iii) *Contracting Officer's determination*. The Contracting Officer shall consider the Region Director's finding and shall determine what costs, if any, shall be subsidized during the period reported by the operator. The Contracting Officer shall promptly advise the operator of his determination in writing.

(b) *Nonsubsidized voyages in the U.S. foreign commerce*. (1) For any period of nonsubsidized service in the

U.S. foreign commerce with respect to which the Board has granted prior authorization, a vessel shall go off subsidy after 2400 hours local time of the day of final discharge of cargo on the last subsidized voyage, or in the event the nonsubsidized voyage follows a subsidized period of reduced crew, idleness or lay-up, the vessel shall be deemed to be off subsidy at 0001 hours local time of the day following the day on which such period of reduced crew, idleness or lay-up terminates. The vessel shall continue in this nonsubsidized service until 2400 hours local time of the day of final discharge of the nonsubsidized cargo after which time the vessel will resume subsidized status. In the event the vessel makes consecutive nonsubsidized voyages during any such period of nonsubsidized service, it will remain in nonsubsidized status until completion of the final nonsubsidized voyage.

(2) For the purposes of meeting the requirements set forth in §§ 252.20(a) and 252.21, any such nonsubsidized voyage will be considered in the same manner as a subsidized voyage.

(3) Voyage reports shall be submitted upon the completion of each nonsubsidized voyage in the same manner as specified in § 252.23(a) and shall clearly indicate that the voyage is nonsubsidized.

[40 FR 43490, Sept. 22, 1975, as amended at 43 FR 4858, Feb. 6, 1978; 51 FR 40426, Nov. 7, 1986]

§ 252.21 Essential service requirement.

(a) *Essential service.* A vessel which is not subject to a charter, or a vessel subject to a charter which does not exceed 5 years duration and which may not be extended beyond 5 years duration by exercise of an option either within the charter or contained in a separate agreement, shall be deemed to be in an essential service, within the meaning of section 211(b) of the Act. The operator shall be entitled to the full amount of ODS payable under the operator's ODSA (less any reduction with respect to the carriage of cargo in the coastwise or intercoastal trades, as described in section 605(a) of the Act). A vessel subject to a charter which exceeds 5 years duration, or which may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement), shall not be deemed to be in an essential service unless such charter has been approved by the Maritime Administrator pursuant to paragraph (b) of this section.

(b) *Approval of charters.* Charters of vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement) shall be submitted to the Maritime Administrator for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Maritime Administrator finds that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. The Maritime Administrator shall base this finding on all relevant considerations, including but not limited to, the terms of the charter, the business of the charterer and the normal tendency for bulk operators to participate substantially in U.S. foreign commerce. When the Maritime Administrator has made this finding with respect to a vessel, its operations during any period of subsidized service while subject to that charter shall be deemed to be operation in an essential service. The payment of ODS for such period shall not be reduced because of any amendment to this section or any other provision in this Part 252 made prior to expiration of the charter. ODSA default provisions shall be applicable to noncompliance with this requirement. Charters that do not exceed 5 years and do not provide for extension beyond 5 years do not have to be submitted for approval by the Maritime Administrator, unless otherwise required by the ODSA. Charters previously approved by the Maritime Administration under existing procedures are deemed approved for purposes of this section.

(c) *Modification of requirement.* The Board shall have the authority to modify prospectively the provisions of this section as future circumstances may dictate. However, any such modification made by the Board shall apply only to charters that are executed on or after the date of the Board action, and the Board shall have discretion in determining whether such modification shall have general or limited applicability.

(d) *Applicability.* This is a general requirement applicable to the payment of ODS to operators of all types of bulk cargo vessels. The provisions of any ODS regulations pertaining specifically to dry bulk cargo vessels as may be finally adopted by the Maritime Administration and set forth in Title 46, Code of Federal Regulations, shall govern as to dry bulk cargo vessels where such provisions are inconsistent with those contained in this section.

[45 FR 30442, May 8, 1980]

§ 252.22 Substantiality and extent of foreign-flag competition.

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined, as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage ranges as follows:

(1) Range A-vessels of less than 25,000 DWT;

(2) Range B-vessels of 25,000 but less than 50,000 DWT;

(3) Range C-vessels of 50,000 but less than 100,000 DWT; and

(4) Range D-vessels of 100,000 or more DWT.

(b) *Competitive classes and range.* The following classes of foreign-flag vessels in the same tonnage range as the subsidized vessel shall be deemed to be competitive with the subsidized vessel:

Subsidized Vessels and Foreign-flag Class

(1) General tanker—general tanker

(2) Chemical tanker—general and chemical tankers

(3) OBO—general dry bulk carriers and tankers, OBO, bulk/oil, ore/oil and ore carriers

(4) General dry bulk carrier—general dry bulk carriers

(c) *Grouping and ranking competitive foreign-flags.* The foreign-flag vessels deemed to be competitive with the subsidized vessel shall be grouped by nationality and ranked according to the total deadweight tonnage under each foreign-flag.

(d) *Competitive foreign flag.* The competitive foreign flag shall be the flag with the greatest total tonnage in the range.

(e) *Largest foreign flag not competitor.* In the event that the Board believes that the competitive foreign-flag so determined pursuant to this § 252.22 is not a substantial competitor of any particular operator, the Board may determine the foreign-flag competition in a manner that more accurately reflects the true competition of the particular operator. In making this determination, the Board shall consider the written views of the operator and any other interested parties.

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 8024, Feb. 6, 1980; 51 FR 40426, Nov. 7, 1986]

§ 252.23 Financial and other reporting requirements.

(a) *Voyage report.* The operator shall submit a voyage report to the Director, Office of Subsidy Administration, Maritime Administration, Washington, DC 20590, upon the completion of each subsidized voyage. Each voyage report shall include the following:

(1) Name of vessel and voyage number.

(2) Subsidy contract number.

(3) Vessel activity, including the following:

(i) Ports of voyage commencement and termination, including dates and times.

(ii) Loading ports, including dates of arrival and departure and long tons of cargo loaded (specify commodity).

(iii) Discharge ports, including dates of arrival and departure and long tons of cargo discharged.

(iv) Other ports, ports of bunkering, emergency calls, etc., including dates of arrival and departure (specify reason for call).

(4) All reduced crew periods, all periods of idleness, lay-up and delay, and all related correspondence with the Region Director.

(b) *Condition of vessels, inspection and repairs.* In order that the Maritime Administration may participate in the inspection of vessels, in compliance with Part 272 of this subchapter, the operator shall give at least 24 hours notice to the Region Director as to the time and place of vessel inspections.

(c) *Vessel insurance*—(1) *Policies.* Upon the binding of any insurance policy with respect to a subsidized vessel, the operator shall submit promptly to the Director, Office of Marine Insurance, Maritime Administration, Washington, DC 20590, for approval of the Maritime Administration, a signed copy of each cover note issued by the operator's brokers, which, to the extent applicable, shall set forth as to such vessel the amounts covered by hull, increased value and other forms of total loss protection, as well as protection and indemnity insurance. Such cover notes shall include the rates, the amounts placed in the different markets, the participating underwriters, the amount underwritten by each underwriter, and the amounts of the deductibles. Upon request, copies of the policy shall be submitted to the Maritime Administration for examination.

(2) *Cancellation and policy changes.* The operator shall advise the Maritime Administration promptly of the cancellation of any policy of insurance, any changes in the terms or underwriters of any policy of insurance, any period of lay-up that permits the collection of return premiums, and the occurrence of any major casualty or total loss covered by a policy of insurance.

(d) *Financial statements.* The operator shall submit, in triplicate, to the Director, Office of Financial Approvals, Maritime Administration, Washington, DC 20590, the following reports, including management footnotes where necessary to make a fair financial presentation:

(1) Not later than 120 days after the close of the operator's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6.

(2) Not later than 120 days after the close of the operator's annual accounting period an audited annual financial statement, in accordance with 46 CFR 232.6.

(Reporting requirements for paragraph (a) were approved by the Office of Management and Budget under control number 2133-0024 and reporting requirements for paragraph (d) were approved by the Office of Management and Budget under control number 2133-005)

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 30443, May 8, 1980; 47 FR 25530, June 14, 1982. Redesignated and amended at 51 FR 40426, Nov. 7, 1986]

§ 252.24 Continued eligibility for subsidy.

Operators shall remain eligible for ODS so long as they are engaged in service which would, under this part and sections 601(a), 602, and 605(c) of the Act, qualify for approval of an ODSA. The payment of ODS will be made only for carriage of commercial cargoes for which U.S.-flag vessels are in direct competition with foreign-flag vessels. An example of cargo that is excluded is bulk cargo reported by a shipper as the U.S.-flag share of cargoes subject to an agreement (including a unilateral commitment by a foreign government which has the effect of reserving cargoes for U.S.-flag vessels), between the United States and a foreign government in connection with any U.S. cash transfer foreign assistance program. In such a circumstance, there is no foreign-flag competition for such cargoes.

[54 FR 39182, Sept. 25, 1989]

Subpart D—Calculation of Subsidy Rates

SOURCE: 51 FR 40426, Nov. 7, 1986, unless otherwise noted.

§ 252.30 Amount of subsidy payable.

(a) *Daily rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced crew periods.* For reduced crew periods, as defined in § 252.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule C at § 252.41 of this part.)

(c) *Review of rates.* Daily subsidy rates shall be reviewed every six months. For the item, "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by MARAD. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

§ 252.31 Wages of officers and crews.

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index systems, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance wth the following schedule:

	Minimum (pct)	Maximum (pct)
Base period following a:		
2 year cycle	97½	102½
3 year cycle	96¼	103¾
4 year cycle	95	105

(3) *Collective bargaining cost* (*CBC*) means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost* (*WC*) means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost* (*CBC*). CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Examples of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine

months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of three days for officers and two days for unlicensed crew); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA-790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA-790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA-790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA-790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example Calculation.* The following is a sample calculation of CBC and WC:

ABC BULK CO.

Jan. 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

	Per diem	
	WC	CBC
Crew Complement	[1] 35	[2] 31
Fixed Costs as of January 1, 1985:		
Base Wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	$5.75	$5.75
Vacation Pay	$1,189.60	$1,109.65
Pension, Welfare, Training, Unemployment Fund Contributions	$,280.80	$1,171.75
Total Fixed	$4,265.94	$3,858.75
Variable Costs as of January 1, 1985:		
Variable Cost Factor (based on 1984 cost experience) (pct)	104.69	104.69
Total Variable Costs (January 1, 1985 base wages x variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of January 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.

[2] Approved manning complement.

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitor shall be constructed for the subsidized vessel type using the manning scales and practice of the competitor as developed through an examination of alien crew manifests, payrolls,

and other reliable information. The commonly used crew complement of the competitor shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics", published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign percentage.

ABC BULK COMPANY, INC.

[Jan. 1, 1985—Foreign Wage Cost (FC)]

	United States	Liberia
Crew Complement	26	26
Base Wages	[1] $53,687	[1] $24,779
Allowances	$1,074	$4,584
Vacation Pay (leave)	[1] $35,681	[1] $13,009
Pension and Welfare	[2] $38,407	[1] $2,065
Social Security	[2] $6,608	[2] $7,227

ABC BULK COMPANY, INC.—Continued

[Jan. 1, 1985—Foreign Wage Cost (FC)]

	United States	Liberia
Overtime and other variable costs (not elsewhere included)	[2] $48,732	[2] $10,944
Repatriation		
Total wage costs	$184,189	$62,608
Percentage FC to WC		33.9

[1] Based on Jan. 1 priced out cost.
[2] Based on cost experience.
[3] Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs* (UTC) are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amount would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses shall be eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefits funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC BULK COMPANY, INC.

[Calculation of Wage Subsidy Rates [1]]

Base period	Interim period	U.S. wage cost	Collective bargaining cost	Application of BLS index to base period cost	Averaging in base periods (4)+(5)	Appropriate limits
					2	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1981		$4,162.60	$3,850.29			
	1982	$4,578.24	$4,230.15	$3,850.29×1.0845=$4,175.64		.9×(4)=$3,807.14 1.1×(4)=$4,653.17
	1983	$4,578.24	$4,230.15	$3,850.29×1.1816=$4,549.50		.9×(4)=$4,104.34 1.1×(4)=$5,016.42
	1984	$5,539.40	$4,966.90	$3,850.29×1.2992=$5,002.30		.9×(4)=$4,470.21 1.1×(4)=$5,463.59
1985		$6,139.57	$5,504.06	$3,850.29×1.4044=$5,407.35		.95×(4)=$5,228.86 1.05×(4)=$5,779.26

[1] This computation is based on a new vessel entering subsidized service in May 1981.

Base period cost	Subsidizable wage cost	Foreign cost percentage	Foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
$3,850.9	$3,850.29	32.99	$1,373.24	$2,477.05	64.33
	$4,175.64	32.98	$1,509.90	$2,665.74	63.84
	$4,549.50	32.15	$1,812.49	$2,737.01	60.16
	$5,002.30	34.77	$1,926.05	$3,076.25	61.50
$5,455.71	$5,455.71	33.99	$2,086.84	$3,368.87	61.75

[51 FR 40426, Nov. 7, 1986, as amended at 54 FR 5086, Feb. 1, 1989]

§ 252.32 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL

[Year—1985; U.S. Atlantic—Gulf Coast; Foreign Country—Singapore]

Repair category	Foreign price	U.S. price
Drydocking and Underwater Repairs	$89,840	$300,245
Tank Cleaning and Coating	70,160	77,080
Boiler Repairs	10,545	47,550
Machinery Repairs	22,505	108,165
Hull and Deck Repairs	33,500	99,370
Piping System	71,905	215,830
Electrical Repairs	12,340	36,660
Exterior Painting	5,035	30,640
Interior Painting	390	1,470
Estimate Totals	316,220	917,010

Foreign/U.S. Price Ratio—34%.
Country Cost Differential (100–34)—66%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *U.S.-foreign cost differential.* The U.S.-foreign cost differential for the foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country, and by adding the resulting weighted cost differential for all countries. For example:

ABC BULK COMPANY, INC., U.S.-FOREIGN COST DIFFERENTIAL, 1985

Principal competitor	Distribution of repairs		Country cost differential percent	Weighted cost differentials
	Country	Percent		(1) x (2) (percent)
	(1)		(2)	(3)
Liberia	U.K.	15	19	2.9
	Japan	20	36	7.2
	Singapore	65	57	37.1
U.S.-foreign cost differential				47

(c) *Calculation.* The U.S.-foreign cost differential is applied to the subsidizable maintenance and repair costs to establish the daily M&R subsidy amount.

(1) *Subsidizable costs.* The period used for establishing the subsidizable maintenance and repair costs will generally be a 24- to 36-month period ending in the year prior to the subsidizable year. The length of the period will be the number of months between the last two routine drydockings, and the subsidizable costs will include only the most recent routine drydocking. The costs of each year will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible costs will be divided by the calendar days of the period to establish daily average maintenance and repair costs. The U.S.-foreign differential percentage applicable to the most recent year will be applied to the daily average cost to determine the daily M&R subsidy amount.

(2) *Data submission requirement* The operator is required to submit a Subsidy Repair Summary (Form MA-

140) quarterly in accordance with 46 CFR Part 272. At MARAD's request the operator shall also provide a schedule indicating the date and site of the two most recent drydockings for each subsidized vessel.

[51 FR 40426, Nov. 7, 1986, as amended at 54 FR 5086, Feb. 1, 1989]

§ 252.33 Hull and machinery insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for the service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular av-

erage foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operator's total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

TABLE 2—ABC BULK COMPANY, INC., U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE—1985

1. Foreign Premium Cost:		
A. Hull and Machinery, Total coverage	$92,741,996	
Average Premium Rate in British Market	1.00966%	
Premium Cost in British Market		$936,379
(Estimated Total Loss Premium $92,741,966@ .46500% [1]	431,250)	
B. *Increased Value*, Total Coverage	1,083,325	
Average Premium Rate in British Market	.32550%	
Premium Cost in British Market		3,526
C. *Excess Liability*, Total Coverage		None
D. Total Premium Cost if Insured 100% in British Market		939,905
E. *Deduct Particular Average Portion:* $936,379 Less $431,250= $505,129 x 62% [2]		313,180
F. Net Premium Cost Exclusive of Particular Average		626,725
G. *Particular Average Adjustment*	Worldwide service	
P/A Portion of Premium Cost	$313,180	
M&R Subsidy Rate Complement [3]	84.48%	
Adjusted P/A Foreign Premium Cost	264,574	
Add: Net Premium Cost (Excluding P/A)	626,725	
2. *Foreign Premium Cost*	891,299	
3. *Total Premium Cost to Subsidized Operators*	1,068,998	
4. *Differential in Dollars* [4]	177,699	
5. *U.S.-Foreign Cost Differential* [5]	16.62%	

[1] Estimated gross total loss rate adjusted for brokers discounts, policy tax and other costs, as necessary.

[2] Percentage of particular average.

[3] 100% minus M&R subsidy rate of the same calendar year.

[4] Line 3 less line 2.

[5] Line 4 divided by line 3.

§ 252.34 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, "tovalop" or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such costs would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided, however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible notwithstanding that the deductible

provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for the service of the vessels. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* the crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-Foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC BULK COMPANY, INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

Premium cost (per GRT)	United States	Liberia
Crew liability	[1] $3.98	[2] $1.27
All other liability	$1.06	$1.06
Total cost	$5.04	$2.33
Differential—Excess of U.S. cost over foreign cost		$2.71
U.S.-foreign cost differential (pct)		53.77

[1] Determined by applying 79.03% (based on 5-year claims experience) to total GRT premium rate of $5.04.

[2] Crew Liability data obtained by Maritime Administration.

NOTE: The unweighted percentage of foreign to U.S. wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(d) *Daily subsidy rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, and determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year period. The P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

Item	Calendar year 1979	Calendar year 1980	Calendar year 1981	Total
P&I deductible C.Y. expenses	$1,680,000	$1,220,000	$1,400,000	......
Diff. foreign/U.S. wage cost (pct)	26.00	23.00	20.00	......
Subsidy	$436,800	$280,600	$280,000	$997,4
Voyage days	1,140	1,100	1,225	3,46

Average subsidy per voyage day ($997,400 ÷ 3,465 days) = $287.85.

	Fiscal year 1979	Fiscal year 1980	Fiscal year 1981	Total
Wages fiscal year per diem rate	$7,660	$7,700	$8,050	......
Voyage days	1,090	1,180	1,230	3,5
Subsidy	$8,349,400	$9,086,000	$9,901,500	$27,336,

Average subsidy per voyage day ($27,336,900 ÷ 3,500 days) = $7,810.54.
Ratio P&I deductible ODS to wage ODS $287.85 ÷ $7,810.54 = 3.69%.

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio P&I ded. to wage ODS (pct)	Daily P&I ded. ODS 1/1/85
C4-A	$9,000	×3.69	$332.10
C5-B	9,300	×3.69	343.17
C6-C	9,600	×3.69	354.34

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cos to the foreign competitor for deduc ble absorptions, the composite pe centage differential for wages shall b adjusted by substituting a zero cost fo such foreign competitor in the calcul tion of the differential. The adjus ment of the wage percentage differen tial shall not be used for Japan, whe operators incur minimal costs for d ductible absorptions, rather than n costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims as identified in paragraph (d)(2) of this section for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs, no later than January 1 of the subsidized year.

Subpart E—Subsidy Payment and Billing Procedures

SOURCE: 51 FR 40432, Nov. 7, 1986, unless otherwise noted.

§ 252.40 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

§ 252.41 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

SCHEDULE A

(Company) ______________________

ODSA No. ______________________

ODS Accrued During Fiscal Year 19—

ODS Payable for the Month of ——

	Current voucher	Previous voucher	Total
Total accrued ODS (sched. B)	$——		
Les ODS reductions: reduced crew (sched. C)	——		
Net ODS accrued	——	$——	$——
Less previous payments			——
ODS payable			——

SCHEDULE B

(Company) ______________________

ODS Accrued for the Month of ——

Vessel name	Voy. No.	Voyage dates		Voy. days	Per diem rates	Accrued subsidy
		From	To			
					$——	$——
ODS payable for unpredictably timed expenses not included in daily amount (attach supporting supporting information)						$——
Total accured subsidy (enter on Schedule A)						$——

SCHEDULE C

(Company) ______________________

REDUCED CREW PERIODS

Vessel	Reduced crew dates		No. of reduced crew days (a)		No. of crew reduced		Man-days		Man-day amount		Reduced crew reduction
	From	To									
....	....	....	....	×	....	=	....	×	$——	=	$——
....	....	....	....	×	....	=	....	×	——	=	——
....	....	....	....	×	....	=	....	×	——	=	——
....	....	....	....	×	....	=	....	×	——	=	——
Total reduced crew reduction (enter on Schedule A)	....	....	....	....	....	....	....	....	——		

(a) If licensed crew, indicate (a).
(b) If unlicensed crew, indicate (b).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel, and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

AFFIDAVIT

State of ——————————
City of ——————————
County/Parish of ——————————

I, ——, being duly sworn, depose and say that I am —— (title) of the —— (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ——, dated as of ——, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for bulk cargo vessels, PART 252, Title 46, CFR: and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated ——, covering voyage days allowed for subsidy during the periods commencing ——, and ending ——, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of ——, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a characte that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administratio of all or part of the amount claimed herei shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right o remedy the Maritime Administration, o Secretary of Transportation, acting by an through the Maritime Subsidy Board, o any predecessor or successor, may hav under the terms of said Agreement, or oth-erwise.

I further depose and say that this affid vit is made for and on behalf and at the d rection of the Operator for the purpose o inducing the Maritime Administration t make a payment pursuant to the provision of the aforesaid Operating-Differential Sub-sidy Agreement, as amended.

——————————

Subscribed and sworn to before me, Notary Public, in and for the aforesa County and State, this —— day of —
My commission expires ——————————
Notary Public ——————————

(3) The subsidized operator sha furnish its own supply of supportin schedules and affidavit.

§ 252.42 Appeals procedures.

(a) *Appeals of annual or speci audits.* An operator who disagre with the findings, interpretations o decisions in connection with audit r ports of the Office of the Inspect General and who cannot settle s differences by negotiation with t Contracting Officer may submit appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing a written petition for review of the Board's action with the Secretary of Transportation. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings,* The Rules of Practice and Procedures, 46 CFR Part 201, Subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42.

PART 253—REQUIREMENTS FOR MAINTAINING BOOM LIFTING CAPACITIES AND OTHER FEATURES

Sec.
253.1 Purpose.
253.2 Changes not to be made without Maritime Subsidy Board approval.
253.3 Responsibility of operator.
253.4 Requests for exceptions.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 93, 27 FR 9947, Oct. 10, 1962, unless otherwise noted.

§ 253.1 Purpose.

The purpose of this part is to insure preservation of all basic design characteristics and features approved by the Maritime Subsidy Board and the Navy for ships built with construction-differential subsidy.

§ 253.2 Changes not to be made without Maritime Subsidy Board approval.

The owner of a ship built under a construction-differential subsidy agreement shall not, without first receiving written approval by the Maritime Subsidy Board, make or permit to be made, any substantial change in the structure, type or speed of the vessel or a change in any of her riggings, or remove any item of material or equipment from the vessel which would effect a major change in any of the listed vessel features, whether classed as a commercial feature or as a national defense feature.

§ 253.3 Responsibility of operator.

(a) Each operator, in connection with cargo gear, is responsible for maintaining the originally approved boom lift capacities on all vessels constructed or reconstructed under contracts entered into pursuant to Title V of the Merchant Marine Act, 1936, as amended, on and after October 7, 1955.

(b) A vessel having lift capability with ordinary booms of ten tons or over at several hatches and sixty tons or over at a heavy lift location, all installed as approved by the Maritime Subsidy Board, will be in compliance with this part regardless of whether the rated capacity rigging is actually retained in working position, provided such rigging for at least three sets of ten tons or over booms (six booms) and the heavy lift is properly maintained aboard and can be restored to working position by the ship's crew on short notice.

(c) Any rigging removed from the ship as permitted by paragraph (b) of this section shall be accounted for by the owner to the Administration and shall be properly maintained ashore, so that it can be restored to working position upon request by the Board.

§ 253.4 Requests for exceptions.

Requests by operators for exceptions to any of the above requirements shall be addressed to the appropriate Coast Director who will forward them to the Maritime Subsidy Board with his recommendations.

PART 262—MINIMUM-WAGE, MINIMUM-MANNING, AND REASONABLE WORKING CONDITIONS

GENERAL

Sec.
262.1 Scope of scales and working conditions.
262.2 Right of contractor to set higher wage scales.
262.3 Classification of vessels for minimum-wage and minimum-manning scales applicable to licensed officers.

MINIMUM-WAGE SCALES

262.11 Licensed officers.
262.12 Unlicensed personnel.
262.13 Radio operators.

MINIMUM-MANNING SCALES

262.21 Licensed officers.
262.22 Unlicensed personnel.

REASONABLE WORKING CONDITIONS

262.31 Licensed officers.
262.32 Unlicensed personnel.
262.33 Radio operators.
262.34 Suspension.

CADETS AND OFFICERS

262.50 Exclusion of cadets and cadet officers from minimum-manning and wage scales and working conditions.

RULES AND REGULATIONS GOVERNING CHANGES IN MINIMUM-MANNING AND WAGE SCALES AND REASONABLE WORKING CONDITIONS AND HEARINGS THEREON

262.101 Scope of rules.
262.102 Petition for hearing.
262.103 Views of interested parties.
262.104 Order for and notice of hearing.
262.105 Conduct of hearing and appearances.
262.106 Proposed report and service thereof.
262.107 Exceptions to proposed report.
262.108 Report and recommendations to the Board.
262.109 Final action of Board.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 301, 49 Stat. 1992, as amended; 46 U.S.C. 1131.

SOURCE: General Order 15, 2 FR 2627, Oct. 23, 1937, unless otherwise noted.

CROSS REFERENCES: For hours of labor on shipboard, see Part 157 of this title. For licensed officers and certificated men, see Parts 10 and 12 of this title. For manning of inspected vessels, see Part 157 of this title. For Department of State regulations relating to seamen's wages, see 22 CFR Part 82

GENERAL

§ 262.1 Scope of scales and working conditions.

The following minimum-wage and minimum-manning scales and reasonable working conditions shall be applicable to each subsidized vessel upon the first signing, after November 1, 1937, of shipping articles for a subsidized voyage of such vessel.[1]

§ 262.2 Right of contractor to set higher wage scales.

These minimum wage scales, minimum-manning scales and reasonable working conditions shall not affect the rights of any contractor or his employees to set higher wage scales, increased manning scales or better working conditions by collective bargaining or otherwise.

§ 262.3 Classification of vessels for minimum-wage and minimum-manning scales applicable to licensed officers.

For the purpose of establishing minimum-wage and minimum-manning scales applicable to licensed officers subsidized vessels are classified as set forth below according to their "power tonnage," which represents the gross tonnage of a vessel plus its indicated horsepower as shown in "Merchant Vessels of the United States," June 30

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[1] Section 301(a), Merchant Marine Act 1936 (49 Stat. 1992; 46 U.S.C., Sup., 1131(a)) provides:

"Every contractor receiving an operating differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel."

1936, published by the Bureau of Marine Inspection and Navigation of the United States Department of Commerce:

Class	Power tonnage
SINGLE SCREW	
A	20,001 and over.
B	12,001 to 20,000.
C	7,501 to 12,000.
D	5,001 to 7,500.
E	Less than 5,001.
TWIN SCREW	
A-3	35,001 and over.
A-2	28,001 to 35,000.
A-1	20,001 to 28,000.
A	15,001 to 20,000.
B	9,001 to 15,000.
C	5,501 to 9,000.
D	3,501 to 5,500.
E	Less than 3,501.

MINIMUM-WAGE SCALES

§ 262.11 Licensed officers.

The wages paid to licensed officers employed on vessels receiving an operating-differential subsidy from the Board shall not be less than the wages set forth in the following table for the various ratings on the several different classes of vessels:

Classification of vessels[1]	Wages per month						
	A-3	A-1	A	B	C	D	E
LICENSED DECK OFFICERS							
Rating:							
Master	....	....	....	....	....	....	....
First officer (in rank)	$265	$225	$215	$205	$190	$185	$180
Second officer (in rank)	210	200	190	175	165	160	155
Third officer (in rank)	185	175	165	160	150	145	140
Fourth officer[2]	170	160	150	140	....	....	....
Other licensed officers[2]	115	115	115	115	115	115	115
LICENSED ENGINEER OFFICERS							
Rating:							
Chief engineer	$390	$335	$315	$310	$300	$275	$265
First-assistant engineer (in rank)	265	225	215	205	190	185	180
Second-assistant engineer (in rank)	210	200	190	175	165	160	155
Third-assistant engineer (in rank)	185	175	165	160	150	145	140
Fourth-assistant engineer (in rank)	170	160	....	....	....	....	....
Other licensed engineers[2]	140	130	125	115	115	115	115

[1] See § 262.3.

[2] If carried.

§ 262.12 Unlicensed personnel.

The wages paid to unlicensed personnel employed on all classes of vessels receiving an operating-differential subsidy from the Board shall not be less than the wages set forth in the following table for the various ratings:

Rating	Wages per month
DECK DEPARTMENT	
Boatswain	$85.00
Boatswain's mate	82.50
Carpenter	85.00
Carpenter's mate	80.00
Storekeeper	77.50
Quartermaster	77.50
Able seaman	72.50
Ordinary seaman	55.00
Watchman	72.50
Deck boy	50.00
ENGINE DEPARTMENT	
Junior engineer	110.00
Oiler	82.50
Watertender	82.50
Fireman	72.50
Storekeeper	82.50
Wiper	60.00

Rating	Wages per month
STEWARD'S DEPARTMENT ON PASSENGER VESSELS	
Utility man	55.00
Waiter	55.00
Steward	55.00
Bell boy	35.00
STEWARD'S DEPARTMENT ON FREIGHT VESSELS	
Chief steward	120.00
Chief cook	105.00
2nd cook and baker	90.00
Messman	60.00
Messboy	55.00

§ 262.13 Radio operators.

On vessels employing not more than one radio operator, the minimum wage of such operator shall be not less than $125 per month. On vessels employing more than one radio operator, the minimum wage of the operator of lowest rank shall be not less than $110 per month.

MINIMUM-MANNING SCALES

§ 262.21 Licensed officers.

(a) On all vessels of Class C[2] power tonnage and above, there shall be carried, in addition to the chief engineer, no less than four other engineers, of whom at least three shall be licensed engineers.

(b) Minimum-manning scales for other ratings will be prescribed by the Board for individual vessels or types of vessels on completion of individual surveys of each ship.

§ 262.22 Unlicensed personnel.

(a) On all vessels having a "power tonnage" of 7,501 to 12,000, at least one wiper shall be carried, and on all vessels of a "power tonnage" of 12,001 and over, no less than two wipers shall be carried. "Power Tonnage" as used in this section represents the gross tonnage of the vessel plus its indicated horsepower as shown in "Merchant Vessels of the United States," June 30, 1936, published by the Bureau of Marine Inspection and Navigation of the United States Department of Commerce.

(b) Minimum-manning scales for other ratings will be prescribed by the Board for individual vessels or types of vessels on completion of individual surveys of each ship.

REASONABLE WORKING CONDITIONS

§ 262.31 Licensed officers.

The following reasonable working conditions are prescribed for licensed officers employed on all types of vessels receiving an operating-differential subsidy.

(a) *Obedience.* Prompt obedience shall be rendered to the orders of the master and other superior officers.

(b) *Holidays.* For the purpose of these working conditions, the following shall be deemed to be holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When any of the foregoing holidays fall on Sunday, the following Monday shall be deemed to be a holiday.

(c) *Inspections.* In order to insure cleanliness and orderliness the heads of the various departments shall make a daily inspection of all crew accommodations. The master shall personally make at least one weekly inspection of the entire vessel with particular attention to the crew's quarters and food, and he shall enter a record in the log of his inspection and findings.

(d) *Subsistence and quarters.* When meals are not furnished, licensed officers shall receive a subsistence allowance at the rate of $3 per day and, when required to sleep ashore, they shall receive an allowance of $2 per night for lodging.

(e) *Travel allowances.* When traveling in the course of employment from one vessel to another or from one port to another, licensed officers shall be paid regular wages while en route and shall be provided with transportation (first class by land, with berth, and cabin class by sea) and subsistence at the rate of $3.75 per day except where subsistence is included with transportation.

(f) *Withdrawal of vessel from service.* (1) If, prior to the completion of shipping articles, the vessel is withdrawn from service for any cause, including shipwreck, licensed officers shall be provided with return transportation and subsistence, as provided in paragraph (e) of this section, to the port where shipping articles were signed, unless another port is designated in the shipping articles. Full wages shall be paid up to the time of arrival at either of such ports. Application for such return transportation, subsistence and wages must be made within 15 days from the date of withdrawal of the vessel from service, except that, in the case of shipwreck, such application must be made within 15 days from the date of arrival at a safe port.

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[2] See § 262.3.

(2) Licensed officers entitled to return transportation in accordance with this section shall not be paid the money equivalent of such return transportation.

(g) *Retention of licensed officers.* No licensed officer shall be laid off without pay over a Saturday afternoon, Sunday or a holiday. A full complement of licensed officers shall be employed on any vessel operating on a regular schedule at all times when such vessel is in port, unless the time between arrival at and sailing from the port exceeds 15 days, or unless such vessel is to be withdrawn from service: *Provided,* That licensed officers, whose employment has been terminated or who are on vacation need not be replaced.

(h) *Vacation.* For each year of continuous service on the subsidized vessels of the contractor beginning with November 1, 1937, every licensed officer shall receive a vacation of 14 consecutive days with full pay.

(1) Such vacation shall be cumulative to the extent mutually agreed upon and shall be allowed at such times as may be convenient to the operating necessities of the service. No cash allowance in lieu of vacation shall be made.

(2) If, after 6 months of continuous service, employment is terminated through no fault of the officer, he shall be entitled to such vacation as has accrued on the basis of one-twelfth the annual period per month. Continuous service shall not be deemed to be broken by temporary furloughs from the service of the contractor: *Provided,* That no vacation shall accrue during such periods of furlough.

§ 262.32 Unlicensed personnel.

Prompt obedience shall be rendered to the orders of the master and other superior officers.

(a) *Holidays.* For the purpose of these working conditions, the following shall be deemed to be holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When any of the foregoing holidays falls on Sunday, the following Monday shall be deemed to be a holiday.

(b) *Inspections.* In order to insure cleanliness and orderliness, the heads of the various departments shall make a daily inspection of all crew accommodations. The master shall personally make at least one weekly inspection of the entire vessel with particular attention to the crew's quarters and food, and he shall enter a record in the log of his inspection and findings.

(c) *Subsistence and quarters.* When meals are not furnished, unlicensed members of the crew shall receive a subsistence allowance at the rate of $1.80 per day and, when required to sleep ashore, they shall receive an allowance of $1 per night for lodging.

(d) *Travel allowance.* When traveling in the course of employment from one vessel to another or from one port to another, unlicensed personnel shall be paid regular wages while en route and shall be provided with necessary transportation and subsistence at the rate of $2.50 per day, except where subsistence is included with transportation.

(e) *Withdrawal of vessel from service.* (1) If, prior to the completion of shipping articles, the vessel is withdrawn from service for any cause, including shipwreck, unlicensed personnel shall be provided with return transportation and subsistence, as provided in paragraph (d) of this section, to the port where shipping articles were signed, unless another port is specifically designated in the articles. Full wages shall be paid up to the time of arrival at either of such ports. Application for such return transportation, subsistence and wages must be made within 15 days from the date of withdrawal of the vessel from service, except that, in the case of shipwreck, such application must be made within 15 days from the date of arrival at a safe port.

(2) Unlicensed personnel entitled to return transportation in accordance with this section shall not be paid the money quivalent of such return transportation.

(f) *Vacations.* For the first year of continuous service on the subsidized vessels of the contractor beginning November 1, 1937, every unlicensed member of the crew shall receive a vacation of 7 consecutive days with full pay and, for each subsequent year of continuous service, a vacation of 14 consecutive days with full pay.

(1) Such vacation shall be cumulative to the extent mutually agreed upon and shall be allowed at such time as may be convenient to the operating necessities of the service. No cash allowance in lieu of vacations shall be made.

(2) If, after 6 months of continuous service, employment is terminated through no fault of the employee, he shall be entitled to such vacation as has accrued on the basis of one-twelfth the annual period per month. Continuous service shall not be deemed to be broken by temporary furloughs from the service of the contractor: *Provided,* That no vacation shall accrue during such periods of furlough.

§ 262.33 Radio operators.

Prompt obedience shall be rendered to the orders of the master and other superior officers.

(a) *Holidays.* For the purpose of these working conditions, the following shall be deemed to be holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When any of the foregoing holidays falls on Sunday, the following Monday shall be deemed to be a holiday.

(b) *Inspections.* In order to insure cleanliness and orderliness, the heads of the various departments shall make a daily inspection of all crew accommodations. The master shall personally make at least one weekly inspection of the entire vessel with particular attention to the crew's quarters and food, and he shall enter a record in the log of his inspection and findings.

(c) *Regulations.* Radio operators shall observe all rules and regulations promulgated by the Federal Communications Commission and shall be required to know the rules and regulations of the radio company servicing the radio station of the vessels on which employed.

CROSS REFERENCE: For regulations of the Federal Communications Commission, see 47 CFR Chapter I.

(d) *Allowance for travel.* When traveling in the course of employment from one vessel to another or from one port to another, radio operators shall be paid regular wages while en route and shall be provided with transportation (first class by land, with berth, and cabin class by sea) and subsistence at the rate of $3.75 per day except when subsistence is included with transportation.

(e) *Withdrawal of vessel from service.* (1) If, prior to the completion of shipping articles, the vessel is withdrawn from service for any cause, including shipwreck, radio operators shall be provided with return transportation and subsistence as provided in paragraph (d) to the port where shipping articles were signed, unless another port is specifically designated in the articles. Full wages shall be paid up to the time of arrival at either of such ports. Application for such return transportation, subsistence and wages must be made within 15 days from the date of withdrawal of the vessel from service, except that, in case of shipwreck, such application must be made within 15 days from the date of arrival at a safe port.

(2) Radio operators entitled to return transportation in accordance with this rule shall not be paid the money equivalent of such return transportation.

(f) *Maintenance of station.* No radio operator shall be required to furnish equipment or supplies necessary for the maintenance of the vessel's radio station.

(g) *Subsistence ashore.* When meals are not furnished, radio operators shall receive a subsistence allowance at the rate of $3 per day and, when required to sleep ashore, they shall receive an allowance of $2 per night for lodging.

(h) *Retention in port.* No radio operator shall be laid off without pay over a Saturday afternoon, Sunday or holiday.

(i) *Vacations.* For each year of continuous service on the subsidized vessels of the contractor beginning with November 1, 1937, every radio operator shall receive a vacation of 14 consecutive days with full pay.

(1) Such vacation shall be cumulative to the extent mutually agreed upon and shall be allowed at such times as may be convenient to the operating necessities of the service. No cash allowance in lieu of vacation shall be made.

(2) If, after 6 months of continuous service, employment is terminated through no fault of the radio operator, he shall be entitled to such vacation as has accrued on the basis of one-twelfth the annual period per month. Continuous service shall not be deemed to be broken by temporary furloughs from the service of the contractor: *Provided,* That no vacation shall accrue during such periods of furlough.

§ 262.34 Suspension.

(a) In order to make available an increased number of qualified officers and unlicensed personnel to meet the higher levels of manpower demand associated with the current level of shipping activity, each officer and seaman may, at his option, in accordance with the terms of paragraph (b) of this section, waive time off for accrued vacations but receive accrued vacation pay while on active duty status.

(b) Subject to the following stated conditions, the Maritime Administrator/Maritime Subsidy Board suspends until such time that conditions warrant otherwise, the working condition requirement contained in §§ 262.31 through 262.33 of this part:

(1) In each instance the union must certify to the operator that qualified personnel are not otherwise available;

(2) Such suspension of said working condition requirement is deemed temporary;

(3) The working condition requirement contained in §§ 262.31 through 262.33 will be returned to its former status when, in the opinion of the Maritime Administrator/Maritime Subsidy Board, conditions so warrant; and

(4) The election to accept a proffered cash allowance in lieu of time off shall be optional with the crew member.

[G.O. 15, Amdt. 1, 31 FR 8494, June 17, 1966]

CADETS AND OFFICERS

§ 262.50 Exclusion of cadets and cadet officers from minimum-manning and wage scales and working conditions.

The Board having determined, on advice of its General Counsel, that Cadets and Cadet Officers in training on vessels receiving an operating subsidy do not come within the purview of Title III, section 301 of the Merchant Marine Act, 1936, §§ 262.1 to 262.33, and the supplements thereto are hereby amended to exclude cadets and cadet officers from the provisions thereof.

[G.O. 33, 5 FR 2892, Aug. 20, 1940]

RULES AND REGULATIONS GOVERNING CHANGES IN MINIMUM-MANNING AND WAGE SCALES AND REASONABLE WORKING CONDITIONS AND HEARINGS THEREON

§ 262.101 Scope of rules.

The rules in §§ 262.101 to 262.109 are promulgated by the Federal Maritime Board under section 301(a) of the Merchant Marine Act, 1936, as amended, to govern changes in minimum manning scales, minimum wage scales and minimum working conditions for officers and crews employed on vessels receiving any operating-differential subsidy and hearings thereon:

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.102 Petition for hearing.

Any interested party desiring revision of any of the standards set up in the minimum manning scales, minimum wage scales or minimum working conditions prescribed by the Board under section 301(a) may petition the Board for a hearing to that end. Such petition shall specify the revision or revisions considered desirable and the reasons in support thereof.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.103 Views of interested parties.

Upon receipt of a petition for a hearing, the Board will provide for an investigation of the views of all parties whose interests appear affected by the petition and for a report thereof to the Board.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.104 Order for and notice of hearing.

If the Board determines that there is reasonable ground therefor, the Board shall order a hearing and issue public notice thereof, setting forth the time, place and scope of the hearing. Such notice shall be filed with and published in the FEDERAL REGISTER not less than 15 days prior to the date of the hearing, when practicable.

[G.O. 32, 5 FR 2229, June 14, 1940]

180§ 262.105 Conduct of hearing and appearances.

The conduct of the hearing shall be a function of the Hearing Examiners' Office except where the Board shall otherwise direct. Any individual, firm, corporation, group, organization or other party interested in the outcome of the proceedings shall have the right to appear, either personally or by representation, at the hearing and be heard. The duly elected representatives of the organizations which have been certified by the National Labor Relations Board as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearing.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.106 Proposed report and service thereof.

Upon conclusion of the hearing, a proposed report shall be prepared containing a statement of the issues, facts, findings and conclusions. A copy of this proposed report shall be served by mail upon each party who shall have appeared at the hearing and requested a copy thereof.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.107 Exceptions to proposed report.

Within 15 days after service of the proposed report, any party may file and service exceptions to any statement therein contained, together with a brief in support thereof, except that parties on the Pacific Coast, may file and serve such exceptions and briefs within 20 days after service.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.108 Report and recommendations to the Board.

After expiration of the period for the filing of exceptions and briefs, a report and recommendations shall be submitted to the Board, together with the transcript of the record of the hearing and subsequent proceedings.

[G.O. 32, 5 FR 2229, June 14, 1940]

§ 262.109 Final action of Board.

The final action of the Board shall be the adoption of its final report and the issuance of an appropriate order thereon.

[G.O. 32, 5 FR 2229, June 14, 1940]

PART 272—REQUIREMENTS AND PROCEDURES FOR CONDUCTING CONDITION SURVEYS AND ADMINISTERING MAINTENANCE AND REPAIR SUBSIDY

Subpart A—General

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272.41 Requirements for examination and allocation of M&R expenses.
272.42 Audit requirements and procedures.
272.43 Review and appeal procedures.
272.44 Dates.

AUTHORITY: Sections 204(b), 603 and 606, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66.

SOURCE: 55 FR 34919, Aug. 27, 1990, unless otherwise noted.

Subpart A—General

§ 272.1 Purpose.

The purpose of this part is to prescribe the requirements and procedures for determining the condition of vessels receiving operating-differential subsidy, to prescribe the requirements for reporting and substantiating maintenance and repair (M&R) expenses, and to establish the criteria and procedures for determining whether a M&R expense is subsidizable.

§ 272.2 Scope.

Except as otherwise provided in subpart B, the provisions of this part apply only to vessels operating under an operating-differential subsidy agreement which provides for the payment of M&R subsidy, except that this part does not apply to any vessel operating under an operating-differential subsidy agreement for the carriage of bulk raw and processed agricultural commodities from the United States to the Union of Soviet Socialist Republics, pursuant to part 294 of this chapter.

§ 272.3 Definitions.

For the purposes of this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1101 *et seq.*

(b) *MARAD* means the Maritime Administration, a unit of the United States Department of Transportation, as distinguished from the Board (which is a unit of MARAD).

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Domestic Origin:*

(1) *Labor.* With respect to labor, Domestic Origin means that the work shall be performed by a U.S. ship repair facility, a U.S. independent contractor, or by the Operator's own shore gang.

(2) *Materials.* With respect to materials, Domestic Origin means that all articles, materials, and supplies shall be of the growth, production or manufacture of the United States.

(e) *Eligible Vessel* means a vessel operated under an ODSA, other than an ODSA subject to part 294 of this chapter, which provides for the payment of M&R subsidy with respect to the operation of that vessel.

(f) *Equipment* means that part of an Eligible Vessel that is not part of the vessel's hull or machinery.

(g) *Expendable equipment* means those articles, outfittings and furnishings that are portable, semi-portable or detachable, that are used in equipping a ship for service and in its normal day-to-day maintenance and operation, and that are subject to casual or gradual deterioration and replacement. It does not include items classified as stores and supplies or Spare Parts.

(h) *Improvement* means work to be performed on an Eligible Vessel which is a modification, alteration, addition or betterment, which may be accomplished separately from M&R, but may be eligible for M&R subsidy pursuant to § 272.22 of this part.

(i) *M&R* and *M&R Subsidy* mean, respectively, maintenance and repairs and maintenance and repair subsidy payable pursuant to section 603 of the Act.

(j) *ODS* and *ODSA* refer, respectively, to operating-differential subsidy provided under an operating-differential subsidy agreement entered into pursuant to title VI of the Act.

(k) *Operator* means any individual, partnership, corporation, or association that enters into an ODSA with the Board pursuant to title VI of the Act.

(l) *Permanent equipment* means Equipment that is, or is intended to become when installed, an integral, permanent, built-in part of the vessel.

(m) *Region Office* means any one of the four Maritime Administration Region Offices in New York, NY; New Orleans, LA; San Francisco, CA; and Chicago, IL; established pursuant to section 809 of the Act.

(n) *Spare parts* means such items as spare propellers and tailshafts and self-contained operable units of machinery or equipment, as well as those items generally recognized within the maritime industry as Spare Parts.

(o) *United States* means the states of the United States, the District of Columbia and Puerto Rico.

§ 272.4 Effective date.

The provisions of this part apply to voyages of every Eligible Vessel which terminate on or after September 26, 1990.

§ 272.5 Prior instructions superseded.

The provisions of this part supersede any provisions of MARAD Circular Letters and Accounting Instructions applicable to M&R and dated prior to the effective date of these regulations to the extent that the provisions of this part may be inconsistent with the provisions of such prior instructions.

Subpart B—Requirements and Procedures for Determining the Condition of Eligible Vessels

§ 272.11 Scope.

This subpart applies to any Eligible Vessel, other than one operating under an ODSA subject to part 294 of this chapter.

§ 272.12 Determining the condition of eligible vessels.

The Operator of an Eligible Vessel shall make the vessel available whenever MARAD may require, in any of the following instances:

(a) At the commencement of the first subsidized voyage, except for a newly constructed vessel which enters subsidized service immediately upon delivery by the shipyard, and for which there is a prior condition survey report. If that subsidized service commences outside the continental limits of the United States, the vessel may be surveyed at the first United States port of call;

(b) At the commencement of the first voyage following the effective date for M&R subsidy established by MARAD, if such M&R rate was not established at the commencement of the vessel's first voyage;

(c) Upon the discontinuance of a M&R subsidy rate;

(d) Upon resumption of subsidized voyages after temporary withdrawal from subsidized operation. The vessel shall not be considered as having been temporarily withdrawn from subsidized service if it performed unsubsidized voyages in a subsidized service of the Operator;

(e) Upon withdrawal from subsidized service, either temporarily (subject to the provisions of paragraph (d) of § 272.14), or permanently;

(f) During the dry docking period incident to the vessel's American Bureau of Shipping Special Surveys;

(g) Upon termination of the last voyage under the ODSA, or at the end of the contract period, with respect to subsidized vessels in idle status at that time; or

(h) At any other time that MARAD considers to be appropriate.

§ 272.13 Operator's responsibilities.

Whenever MARAD notifies an Operator that a survey of an Eligible Vessel is required under this section, the Operator shall:

(a) Make the vessel immediately available for survey if the vessel is in a port of the United States at the time of notification, or make the vessel available for survey immediately upon arrival at the first port of call in the United States if the vessel is not in a port of the United States at the time of notification; and

(b) Furnish to the Secretary of the Board the following:

(1) A copy of each American Bureau of Shipping report and every other salvage association or damage survey report; and

(2) Copies of certificates or other evidence of compliance with applicable laws, rules, and regulations as to vessel condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and compliance with all applicable treaties and conventions to which the United States is a signatory.

(Approved by the Office of Management and Budget under control number 2133-0007)

§ 272.14 Survey procedures.

(a) *Prior to survey.* Unless otherwise directed by MARAD, the Operator of a vessel which is required to be surveyed under this subpart shall contact the ship operations unit of the Region Office in which the survey is to be conducted.

(b) *Operator's assistance to surveyor.* The Operator shall assist the marine surveyor performing the survey for MARAD and shall permit access by that surveyor to all parts of the vessel, its log books, and other official records. The Operator may designate a representative to accompany the marine surveyor during the survey, but no Operator's representative is required to be present during the survey.

(c) *On-subsidy surveys.* An on-subsidy survey consists of the following:

(1) *Vessel survey.* This includes an inspection and the completion of reports by the surveyor, in sufficient detail to reveal a comprehensive picture of the conditions noted.

(2) *On-subsidy survey report.* The on-subsidy survey report consists of:

(i) Ship Survey Report, Form MA-58; and

(ii) As appropriate for the circumstances of the survey and the respective vessel, Forms MA-55 (Turbines and Gears Report); MA-56 (Tooth Contact Report); MA-57 (Drydock Report); and MA-59 (Measurements of Piston Rings and Grooves).

(d) *Off-subsidy surveys.* An off-subsidy survey consists of the following:

(1) *Repair specifications.* The Operator shall prepare and furnish to the appropriate Region Office detailed repair specifications covering all repair work attributable to completed subsidized service.

(2) *Off-subsidy survey report.* The survey report for an off-subsidy survey consists of the repair specifications required by paragraph (c)(1) of this section, and the findings of the Region Office on these specifications after the survey required by paragraph (c)(2) of this section.

§ 272.15 Execution of condition survey reports.

Every survey report shall be signed by:

(a) The Operator's representative, when designated pursuant to § 272.13(a), but only if that representative was in attendance during the survey;

(b) The Operator's superintendent engineer or eqivalent;

(c) The marine surveyor who conducted the survey; and

(d) The appropriate representative of the Region Office for the Region in which the survey was conducted.

§ 272.16 Non-compliance with survey requirements.

MARAD may disallow any one or more M&R claims otherwise eligible for subsidy if an Operator fails to:

(a) Contact the appropriate Region Office as required by § 272.14(a);

(b) Comply with provisions of § 272.14(c)(1) with respect to repair specifications, or to make the vessel reasonably available for inspection before its next sailing; or

(c) Comply with any other requirement specified in this subpart B.

Subpart C—Eligibility Criteria for M&R Subsidy; Substantiation of M&R Expenses

§ 272.21 General eligibility criteria.

(a) *Eligible maintenance and repairs.* Costs of maintenance and repair are eligible for M&R subsidy participation if they are:

(1) Performed on an Eligible Vessel;

(2) Necessary, because of subsidized operation, for the M&R or replacement of damaged or worn parts of the vessel's hull, machinery, or Permanent Equipment;

(3) Uncompensated by insurance;

(4) Considered fair and reasonable by the Board;

(5) Of Domestic Origin; and

(6) Otherwise eligible in accordance with provisions of this part.

(b) *Off-subsidy survey items.* Any M&R contained in an executed off-subsidy survey report is eligible maintenance and repair if:

(1) Paragraphs (a) (1) through (6) of this section are met;

(2) The work is accomplished by the Operator before or during the next drydocking period (periodic or otherwise); and

(3) The vessel is either owned by the same Operator who owned it at the time of the off-subsidy survey, or ownership was transferred to the Federal Government pursuant to section 510 of the Act (46 App. U.S.C. 1160).

(c) *Operator furnished items.* In addition to the general requirements of paragaph (a) of this section, the cost of the Operator's materials, supplies, or both, furnished by the Operator which are necessary to the performance of eligible M&R, is eligible for M&R subsidy if:

(1) The items for which the cost was incurred are issued by the Operator from ship's inventory or the Operator's shoreside inventory, or are issued by direct purchase to the ship repair yard, other independent contractor, or shore gang labor; and

(2) No subsidy, whether M&R or otherwise, has previously been paid for such material, supplies, or both; and

(3) The items are of Domestic Origin.

(d) *Costs associated with shore gang labor.* In addition to the general requirements of paragraph (a) of this section, the costs incurred with respect to the Operator's employment of U.S. shore gang labor necessary for the performance of eligible M&R are eligible for M&R subsidy participation only if such costs are:

(1) For direct labor charges;

(2) For eligible Spare Parts, as described in paragraph (e) of this section; or

(3) Incidental to the payment of wages for the direct labor, to the extent that such costs are required by State or Federal law or by collective bargaining agreements.

(e) *Spare parts.* Spare parts are eligible for M&R subsidy if they are:

(1) Necessary for eligible M&R;

(2) Issued by the Operator from the Operator's shoreside inventory or issued by direct purchase to a U.S. ship repair yard, U.S. independent contractor, or U.S. shore gang labor; and

(3) Placed aboard an Eligible Vessel; and

(4) Of Domestic Origin.

§ 272.22 Improvements and other similar work.

(a) *Eligible expenditures.* Any expenditure not in excess of $200,000 for work effected during any one or a series of repair periods, which the Operator and MARAD consider to be an Improvement, is eligible for M&R subsidy if otherwise eligible for such subsidy pursuant to provisions of this Part.

(b) *Capital expenditures.* An expenditure in excess of $200,000 for work effected during any one or a series of repair periods, which is not necessary for maintenance or repair shall be considered to be a capital expenditure, ineligible for M&R subsidy, except that work on an Eligible Vessel which the operator considers to be an Improvement is eligible for M&R subsidy if before awarding this work:

(1) The Operator submits a written request to the Director, Office of Ship Operations, for consideration of the expenditures;

(2) The Director determines that the work is an Improvement and is technically acceptable; and

(3) The Associate Administrator for Maritime Aids approves M&R subsidy for the work, as appropriate, pursuant to the provisions of title VI of the Act.

(c) *Improvements performed in more than one repair period.* Whenever an Operator desires to spread the work incident to any Improvement over more than one repair period, the operator shall give written notice to the Director, Office of Ship Operations, prior to commencement of the work, as to the scope of work involved, expected benefits, the number of voyages over which the work will be spread and the estimated total cost. The operator shall report in the Subsidy Repair Summary (Form MA-140) the actual total cost of such work, covering the repair period in which it is finally completed, and shall attach a copy of the acknowledgement of such notification to the Form MA-140.

§ 272.23 Examples of ineligible expenses.

Expenses ineligible for M&R subsidy participation include, but are not limited to, the following examples:

(a) *Specialized improvements.* Any expenditure or Improvement required to alter, outfit or otherwise equip a vessel for its intended subsidized service which MARAD determines should have been performed before the initial entry of the vessel into subsidized service;

(b) *Convenience items.* Any expenditure for items that the Region Director determines to be aboard a ship only for the convenience of the Operator or crew members, and which are not considered integral parts of the vessel and are not required for seaworthiness, navigation or the health or well-being of the crew or passengers.

(c) *Unsupported expenses.* Any expense item which the Operator fails to substantiate adequately with documentation, as required by § 272.24.

(d) *Untimely submission.* Any expense included in either a repair summary or supplement which was not submitted by the operator within the required time period for M&R items and Marine Loss items as set forth in §§ 272.24 and 272.41, respectively, unless the Operator can prove that such untimeliness was due to circumstances beyond the Operator's control.

(e) *Untimely requests for review.* Any disallowed expense item for which the Operator fails to make a timely request for review, as required by § 272.43.

(f) *Untimely appeals.* Any expense item disallowed in the final determination by the Director, Office of Ship Operations, for which the Operator fails to make a timely appeal to the Board, pursuant to § 272.43.

(g) *Absence of notice of multi-repair period Improvements.* Any expenses for an Improvement extending over more than one repair period in which the Operator did not notify the Director, Office of Ship Operations, as required by § 272.22(c).

(h) *Cargo expenses.* Any expense of special cargo fittings of a temporary nature, dunnage, ceiling, battens, the cleaning of cargo holds and tanks for cargo, the reading and certification of temperatures for refrigerated cargoes, and similar expenses.

(i) *Stevedore damage.* Any expense or any damage to the vessels or cargo gear directly attributable to a stevedore.

(j) *Rented equipment.* Any expense for the rental of Permanent or Expendable Equipment, such as compressors, paint floats, and other similar items for use by shore gangs or ship's crew on repair or other work, radar, radio telephones, and other similar items for use by ship's crew in ship operations.

(k) *Special requirements for trade routes.* Any expense for the initial installation of equipment necessary for the vessel's particular trade route, such as Suez Canal davits, which should have been installed before the entry of the vessel into the particular subsidized service.

(l) *General operating expenses.* Any expense for the loading of stores, the landing and sorting of laundry, pilot service, tug charges, removing surplus equipment to warehouses, and other similar expenses which do not involve actual maintenance and repair.

(m) *Items attributable to unsubsidized operations.* Any item of maintenance or repair that is clearly attributable to unsubsidized operation, including expenses noted in on-subsidy surveys for repairs which clearly should have been made before departure from the last United States port on the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal.

(n) *Overdue classification and inspection requirements.* Any expenses for work required by a classification society or an agency of the Federal Government, which was due (irrespective of any grace period granted) and not completed before the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal, except when such work is attributable to prior subsidized service.

(o) *Foreign maintenance and repairs.* Any expense for any item of M&R, including insurance repairs, that is not of Domestic Origin.

(p) *Marine or other loss.* Any part of an expense or a repair which is recovered or recoverable from an insurer or another party.

(q) *Consumables, expendables.* Any procurement expense for consumables, expendables, and Expendable Equipment, when used or installed by ship's crew or furnished for inclusion in ship's inventory, and any expense for maintenance, repair, or replacement of Expendable Equipment.

(r) *Excessive costs.* Costs for M&R which MARAD considers excessive, after allowing the Operator an opportunity to present all relevant facts pertinent to such costs.

(s) *Overhead costs.* Any expense included in shore gang labor charges which is an overhead item, as prescribed by 46 CFR part 232—Uniform Financial Reporting Requirements.

(t) *Guarantee items.* Any expense for an item adjudged or noted as being a guarantee item of a construction or repair contractor.

§ 272.24 Subsidy repair summaries.

(a) *Filing requirements.* The Operator of an Eligible Vessel shall submit to the appropriate MARAD regional Ship Operations Office a Subsidy Repair Summary (Form MA-140) for each quarter of a calendar year in which one or more of the Operator's Eligible Vessels (including any vessel which has been temporarily withdrawn from subsidized service) terminates a voyage. This quarterly report shall include supporting documents and information, as described in paragraph (c) of this section. This summary may be for either a single voyage or multiple voyages, and shall be filed not later than 120 days after:

(1) The close of the calendar quarter in which a voyage is terminated, or

(2) The date the reported vessel is temporarily or permanently withdrawn from subsidized service.

(b) *Form requirements.* MARAD will make available one copy of Form MA-140 upon request. Each Operator shall furnish its own supply of the form and prepare each form for submission. Information on any Form MA-140 shall pertain to only one vessel. The Operator's superintendent engineer or other responsible official shall certify every summary submitted by an Operator in the following manner:

> This is to certify that, to the best of my knowledge and belief, and based on recorded entries through (*Date*), this is a true and correct statement of repair and maintenance expenditures for the period stated and that the repair and maintenance items indicated as eligible for subsidy participation are reasonably attributable to service subsequent to commencement of the first voyage under the Operating-Differential Subsidy Agreement and were necessary, satisfactorily completed, and the price is fair and reasonable (exceptions are listed on separate page).

(c) *Categorization.* The Operator shall exercise due diligence in identifying each item in the Form MA-140 within the following three separate categories:

(1) *Claimed for subsidy.* This includes the following:

(i) M&R

(ii) Spare Parts

(iii) Improvements

(2) *Marine loss.* If any M&R expense is incurred because of marine loss, the Operator shall list such an M&R expense under this separate category and shall exclude such expense from the totals for the "Claimed for Subsi-

dy" and "Non-Subsidized Items" categories provided for in this section.

(3) *Non-subsidized items.* This category shall include builders' guarantee items, foreign repairs, and other items of M&R expense not claimed for subsidy.

(d) *Required supporting documents and information*—(1) *General.* The Operator shall support every item in the Form MA-140 with documents or other information, in sufficient detail to permit MARAD to determine the fairness and reasonableness of the prices for the submitted work. With respect to any claims for M&R performed outside the United States, the Operator shall submit with the claim a certificate, signed either by the Operator (if it uses its own shore gang labor or materials from its own inventory) or by an official of the ship repair yard or the independent contractor performing the work, stating that the M&R were performed with materials, labor, or both, of Domestic Origin.

(2) *U.S. Independent contractors.* If a U.S. independent contractor performed M&R work, the Operator shall support each such expense with one copy of the contractor's invoices covering the work performed. If an invoice is not itemized and fully descriptive of the work performed with item prices then the Operator shall attach to the contractor's invoice other supporting documentation, such as specifications, prepared in sufficient detail to permit a determination of the fairness and reasonableness of the prices for each segment of the work performed.

(3) *Operator's shore gang.* If an Operator's own U.S. shore gang has performed any M&R work, the Operator shall submit with the Form MA-140 specifications covering that work, prepared in sufficient detail (including the material and labor cost of each item) to permit a determination of the specific cost of each segment of work performed.

(4) *Operator furnished material.* Whenever an Operator furnishes to a contractor material obtained either from the Operator's own ship stores or shoreside inventory, or by direct purchase for a specific job, the Operator shall include on the invoice, requisition form or other form of transfer memorandum the item number for which the material was used and the contract number covering the work performed.

(5) *Spare parts.* The Operator shall ensure that the invoice covering any Spare Part for an Eligible Vessel which is to be used or installed as an integral, permanent part of the vessel, indicates the specific piece or part of the vessel's hull, machinery, or Equipment for which the Spare Part was obtained.

(6) *Foreign repairs.* Operators receiving M&R subsidy shall submit copies of all U.S. Customs entry forms detailing foreign expenditures on behalf of Eligible Vessels. The copies shall include all expenditures made during the quarter.

(Approved by the Office of Management and Budget under control number 2133-0007)

§ 272.25 Requirements for subsidy repayment.

(a) *Repayment of M&R subsidy for compensated marine or other loss.* If an Operator eventually receives compensation from an insurer or any other person for a marine loss or any other loss for which M&R subsidy has been paid, the Operator shall repay to MARAD an amount equal to the amount of subsidy paid with respect to that loss.

(b) *Repayment of M&R subsidy for Improvements—three year service requirement.* If, within three years after the completion of an Improvement for which M&R subsidy was paid, the Operator permanently withdraws the Eligible Vessel from the ODSA, the Operator shall repay to MARAD an amount equal to the amount of M&R subsidy paid with respect to that Improvement unless MARAD shall have determined that such action was beyond the control of the Operator.

(c) *Repayment of M&R subsidy due to allocation of costs.* If the allocation of total M&R costs required by § 272.41(e) of this part results in the allocation of a lesser amount of subsidizable M&R costs than were actually paid for during the calendar year, the Operator shall repay to MARAD the amount of ODS which was paid in excess of the allocated subsidizable costs.

(d) *Administrative action.* If an Operator fails to repay an M&R subsidy required to be repaid by this section, MARAD may either reduce any ODS payable by the amount of M&R subsidy required to be repaid by this section, or take any other action necessary to secure repayment.

Subpart D—Penalties

§ 272.31 Determination of penalty.

Operators whose Eligible Vessels have undergone foreign repairs, which MARAD determines are non-emergency in nature, may be subject to a penalty in an amount equal to the total cost (exclusive of applicable U.S. Customs duties) of such foreign repairs and purchases, such penalty to be effected by a deduction from the Operator's total ODS otherwise accrued. The Director, Office of Ship Operating Assistance, shall notify the Operator by letter with respect to:

(a) MARAD's determination of a penalty and the reasons therefore; and

(b) Whether the determination is final or subject to the submission of additional information.

§ 272.32 Mitigation of penalty.

The Director, Office of Ship Operating Assistance, may decide, after a non-emergency foreign repair occurs, to mitigate the penalty. Any mitigation of penalty shall be based on a determination that special circumstances existed at the time of repair. The Director shall not consider the difference in the price of foreign and domestic repair work in making this determination, and shall not grant prior approval of foreign repairs. In determining whether special circumstances existed, the Director shall consider, among others, the following factors:

(a) The trading area of the vessel both before and after the repair was performed;

(b) Loss of revenue and effect on vessel utilization if the vessel had returned to the United States for repairs;

(c) The additional operating expense which would have resulted from a return to the United States to repair the vessel; and

(d) Whether the repairs could have been deferred until return to the United States, taking into consideration the Coast Guard requirements for dry docking and special surveys.

§ 272.33 Appeals.

The Operator may appeal final penalty determinations of the Director, Office of Ship Operating Assistance, to the Board, as provided in § 272.43(c) of this part.

Subpart E—Examination, Audit, Review and Appeal Procedures

§ 272.41 Requirements for examination and allocation of M&R expenses.

(a) *Examination requirement.* Pursuant to the specific limitations on M&R subsidy in section 603 of the Act, the Region Office shall examine the expenses submitted by an operator on Form MA-140 in order to determine eligibility to receive M&R subsidy and the reasonableness of such expenses.

(b) *Operator's responsibility.* During the examination, the operator shall provide, at the request of the Director or other official of the Region Office, any further documentation or information necessary to support an M&R expense. If such documentation or information, including information required under paragraph (e) of this section, is not received at the Region Office on a timely basis, the Director or other official of the Region Office may disallow the M&R expense.

(c) *Notification of examination results.* At the completion of the examination the Director or other appropriate official of the applicable Region Office shall notify the Operator by letter of the results of the examination, and shall state the reason for each disallowance of an item claimed for subsidy and/or each nonapproval of a marine loss item.

(d) *Record retention requirements.* To facilitate an audit examination of M&R made pursuant to § 272.42 of this part, the Operator shall maintain files arranged by vessel and voyage which shall include, at a minimum, copy of the Region Office notice letter, a copy of the Form MA-140 with all supporting documents submitted therewith, and the condition survey report. The Operator shall retain all the required materials in files for not less than 3 years after completion of the audit.

(1) *Limitation on approval.* Any approval for payment of M&R subsidy for a marine loss item shall be subject to rescission or modification if the Operator subsequently receives insurance or other compensation for the item. The Region Finance Officer may at any time request verification that the Operator has not received such compensation.

(2) *Status report on approved marine loss items.* The Operator shall advise the Region Finance Office by letter as to whether insurance or other compensation will be recovered for the marine loss item. The Operator is responsible for ensuring that the letter reaches the applicable Region Office within 120 days after:

(i) The date on which all repairs for damage attributed to the "Policy Voyage" (as defined in the Operator's insurance policy) are completed, when the amount for such repairs does not exceed the franchise or deductible of the policy, or

(ii) The date of the underwriter's rejection of the Operator's marine loss insurance claim or claims.

(e) *Allocation of costs.* An Operator shall allocate total M&R costs if an Eligible Vessel terminates voyages during the calendar year which were made:

(1) In more than one subsidized service; or

(2) In a subsidized service as well as in an unsubsidized service while under an ODSA;

(f) *Manner of allocation.* The Operator shall allocate the total M&R costs of the vessel, which have been approved by MARAD, to all voyages terminating during the calendar year according to the ratio which the number of days in each voyage (determined in accordance with part 281 of this chapter) bears to the total voyage days of the vessel during the year. The Operator shall keep a record of these allocations and make these records available for any audit conducted pursuant to this part.

(g) *M&R subsidy payment.* During any year in which the Operator is required to allocate total M&R costs, as described in paragraph (f) of this section, and if the other requirements of this part are satisfied, the Operator shall be eligible to receive M&R subsidy payments for repairs charged to each voyage at the rates determined by the Board as applicable to the service, and on the basis authorized by the ODSAs.

(Reporting and recordkeeping requirements contained in paragraph (d) introductory text were approved by the Office of Management and Budget under Control Number 2133-0007)

§ 272.42 Audit requirements and procedures.

(a) *Required audit.* MARAD shall audit the Operator's M&R costs, as necessary, in conjunction with the audit of the Operator's subsidizable expenses for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results.* Upon completion of the audit, the Office of Financial Approvals of MARAD shall notify the Operator of the audit results, including the items disallowed and the reasons for such audit disallowance.

§ 272.43 Review and appeal procedures.

(a) *Exclusive procedures.* Notwithstanding the audit appeal procedures of part 205 of this chapter, the provisions of this section shall be the exclusive remedy available to an Operator for the review and appeal of any disallowance of subsidy for a M&R expense claimed or any penalty assessed pursuant to § 272.31.

(b) *Request for review.* An Operator may request review by:

(1) The Director, Office of Ship Operations, with respect to any disallowance by the Region office of a claimed M&R expense, after receiving the notification required by § 272.41(c); or

(2) The Director, Office of Financial Approvals, with respect to any disal-

lowance of a claimed M&R expense, after receiving the notification required by § 272.42(b).

(c) *Timeliness of request.* The Operator shall file all requests for review pursuant to paragraph (b) of this section within 60 days after the date of the audit notification. Any disallowance with respect to which the Operator fails to file a timely request for review shall be final and shall not be subject to appeal to the Board pursuant to paragraph (e) of this section.

(d) *Notification of review determination.* The appropriate MARAD Office Director shall notify the Operator by letter, with respect to each timely filed review request, of the Director's determination and the reasons for each disallowance and whether the determination is final or subject to the submission of additional information.

(e) *Appeal to the Maritime Subsidy Board*—(1) *Right to appeal.* An Operator may appeal a MARAD Office Director's final determination issued pursuant to § 272.32 (penalties) or § 272.43 (review of claims disallowance or of audit results) of this section to the Board in writing.

(2) *Contents and timeliness.* The Operator shall set forth in any appeal the reasons for the Operator's objection to a penalty or disallowance of M&R subsidy and shall file such appeal with the Secretary of the Board within 60 days after the date of the notification sent to the operator by the appropriate Director pursuant to paragraph (d) of this section or § 272.33.

§ 272.44 Dates.

The dates noted on the letters or notifications sent to the Operator by officials of the Region Office, any Director or any other official or MARAD, pursuant to the provisions of this part, shall be conclusive for the purposes of determining the timeliness of any requests for review made under the provisions of this part.

PART 275—OUTFITTING MATERIALS AND EQUIPMENT FOR CONSTRUCTION-DIFFERENTIAL SUBSIDY VESSELS

Sec.
275.1 Foreword.
275.2 Allowance purchases by Contractor and by Applicant.
275.3 Contractors' and Applicants' purchase procedure.
275.4 Determination of applicable construction-differential subsidy.
275.5 Furnishing of material or equipment by Board.

AUTHORITY: Sec. 204, 46 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 502, 49 Stat. 1996, as amended; 46 U.S.C. 1152.

SOURCE: General Order 37, Rev., 22 FR 8121, Oct. 12, 1957, unless otherwise noted.

§ 275.1 Foreword.

In order that a purchaser or an Owner receiving construction-differential subsidy aid under the provisions of Title V of the Merchant Marine Act, 1936, as amended, may receive the subsidy aid granted by the Board upon items of material or equipment to be purchased by such vessel purchaser or Owner or upon items to be furnished by the shipbuilding contractor pursuant to a contract allowance provision, the procedure set out in this part shall be followed.

§ 275.2 Allowance purchases by Contractor and by Applicant.

(a) The Applicant's proposed plans and specifications for the construction of the vessel for which aid is applied or the proposed plans and specifications for the reconstruction or reconditioning work for which aid is applied shall state what, if any, materials or equipment will be furnished by the Contractor upon the basis of a contract price "allowance" and what, if any, materials or equipment will be furnished to the Contractor by the Applicant (without charge to the Contractor). Such "allowance" materials and equipment and such Applicant furnished materials and equipment shall be listed and each item thereof priced on the basis of its estimated acquisition cost, and shall be subject to approval by the Board.

(b) In the event the Applicant cannot at the time of its submittal to the Board of its proposed plans and specifications furnish the itemized and priced lists of materials and equipment to be covered by a contract price "allowance" or to be furnished to the Contractor by the Applicant, Applicant should so state and should at the same time request to be advised that the Board will consider such lists at a later date. Such lists and prices shall be furnished before the proposed plans and specifications are submitted to shipyard bidders.

(c) Each item of material or equipment purchased by an Applicant or the Contractor shall be purchased upon the basis of competitive bids; provided however, with the prior approval and subject to such conditions as the Board may require, the following items of material or equipment may be purchased upon a negotiated basis.

(1) "Art objects".

(2) Patented items of material and equipment.

(3) Items of material and equipment for which the need was not initially foreseen when the original lists were submitted or which subsequently became necessary because of changes in plans and specifications, the purchase of which on a competitive basis will unduly delay the work.

The Applicant or the Contractor, if directed by the Applicant, may select material or equipment not of the lowest bidder, the subsidy to be determined in such case as provided in § 275.4.

§ 275.3 Contractors' and Applicants' purchase procedure.

(a) Prior to the inviting of any bid, the Applicant or the Contractor shall submit to the Board the specifications covering the item of material or equipment in question and shall also submit a list of the vendors from whom bids will be invited.

(b) Bids shall be invited on such specifications, as approved, or as modified by the Board from the submitted list of bidders as that list is approved and amplified by the Board. Bids shall be invited upon the basis of terms and conditions approved by the Board, which will include the section 505(b) of the Merchant Marine Act, 1936, recapture of profits provisions and other provisions applicable to Government procurement.

(c) Bids shall be transmitted to the Board's representatives as designated in the invitation request, and shall be enclosed in sealed envelopes.

(d) The bids will be opened by the Board's representative who shall tabulate the bids and deliver one copy to the Applicant or the Contractor with the bids and one copy to the Board. The Applicant or the Contractor will evaluate the bids and forward to the Board his recommendation of award with copy of bids.

§ 275.4 Determination of applicable construction-differential subsidy.

The construction-differential subsidy applicable to an item of material or equipment selected or purchased by the Applicant or the Contractor shall be determined upon the basis of the lowest responsible responsive bid as determined by the Board, and the Applicant or the Contractor duly notified.

§ 275.5 Furnishing of material or equipment by Board.

In lieu of approving the Applicant's or the Contractor's inviting bids for an item of material or equipment on specifications approved by the Board, the Board reserves the right to furnish to the Contractor or to the Applicant, as the case may be, such item of material or equipment procured by the Board. In the event such an item of material or equipment is furnished to the Contractor by the Board under an "allowance" provision of the shipyard contract, the total "allowance" in the specifications will be deducted from the contract price. In the event such an item of equipment or material is furnished by the Board to the Applicant, the full estimated price of the item to the Applicant will be deducted from the sum approved by the Board for the Owner's Budget. In either event the unsubsidized portion of the sum of the Board's cost of acquisition of such item and the Board's cost of delivery of such item to the shipyard will be recovered from any amounts which may be due the Applicant or otherwise as the Board may direct.

PART 276—CONSTRUCTION-DIFFERENTIAL SUBSIDY REPAYMENT

Sec.
276.1 Partial repayment-incidental domestic trading.
276.2 Reporting requirement-partial repayment.
276.3 Total repayment.

AUTHORITY: Secs. 204(b), 207, 506, and 714, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156, and 1204) Pub. L. 86-518 (74 Stat. 216); Reorganization Plans No. 21 of 1960 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat 1036); and Dept. of Commerce Organization Order 10-8 (36 FR 19707), July 23, 1973).

§ 276.1 Partial repayment—incidental domestic trading.

In every instance where a vessel, with respect to which a construction-differential subsidy has been paid or allowance therefor has been made in calculating the basic charter hire under section 714 of the Merchant Marine Act, 1936, as amended (49 Stat. 1995, 52 Stat. 995; 46 U.S.C. 1151) is operated in other than exclusively foreign trade, the owner or charterer thereof shall pay to the Maritime Administration, not later than March 31 of the calendar year succeeding such operation, the proportion of the difference between the domestic and foreign cost of such vessel that is required to be paid to the Maritime Administration in such act, and particularly sections 506 and 714 thereof.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 50, 7 FR 588, Jan. 29, 1942, as amended at 45 FR 68394, Oct. 15, 1980]

§ 276.2 Reporting requirement—partial repayment.

Every owner of a vessel for which a construction-differential subsidy has been paid and every charterer of a vessel constructed under the provisions of the Merchant Marine Act, 1936, shall file with the Maritime Administration a General Financial Statement in the form and at the times prescribed by the Maritime Administration but not less frequently than annually; the amount of the payment due the Maritime Administration on account of the operation of such vessel in other than exclusively foreign trade must be shown in Balance Sheet Account No. 430; and a schedule reflecting the details of the manner in which the amount of such payment was determined must be made a corporate part of the General Financial Statement.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 50, 7 FR 588, Jan. 29, 1942, as amended at 45 FR 68394, Oct. 15, 1980]

§ 276.3 Total repayment.

(a) The Maritime Administration reaffirms the allowance of the irreversible total repayment of unamortized construction-differential subsidy (CDS), with interest and rescission permanently of the domestic trading restrictions related to the grant of CDS for tankers of any deadweight tonnage for applications approved between June 6, 1985 and June 5, 1986 in accordance with the terms and conditions of paragraph (b) of this section. The approved applications were for the ARCO INDEPENDENCE ARCO SPIRIT and BROOKLYN.

(b) *Repayment terms*. The full repayment amount consists of the unamortized CDS, as determined by the Maritime Administration, with compounded interest on that amount. The interest rate is the same as the long-term interest rate the owner obtained or would have obtained if long-term debt financing had been used, in financing the owner's portion of the tanker. Unless the Maritime Administrator determined that using interest rates other than long-term bond rates was justified, such rates are used. If more than one long-term bond was issued to finance the owner's portion of a specific tanker, or if one or more of such bonds has more than one rate (such as a serial bond) an average interest rate is computed weighted by the proportion of each bond par value to the total par value of all long-term bonds issued to finance the owner's tanker. The interest payable on the unamortized CDS is computed by continuous compunding of the interest until the day of repayment. For purposes of this paragraph, "long-term bond rates" are either actual Title XI bond rates on a specific owner's tanker or the Title XI long-term bond rate at the time the tanker's statutory life began.

(c) The Maritime Administration reaffirms the allowance of the irreversible total payment of unamortized construction-differential subsidy with interest and rescission permanently of the domestic trading restrictions relating to the grant of CDS for the BAY RIDGE, which repaid on November 1980.

[52 FR 23536, June 22, 1987]

PART 277—DOMESTIC AND FOREIGN TRADE; INTERPRETATIONS

§ 277.1 Guam, Midway and Wake.

Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway and Wake is not "domestic intercoastal or coastwise service" within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico or Alaska.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interprets or applies sec. 805, 49 Stat. 2012, as amended; 46 U.S.C. 1223)

[G.O. 73, 15 FR 9065, Dec. 19, 1950]

PART 278—EMPLOYMENT IN THE FOREIGN-TO-FOREIGN TRADE OF LIQUID AND DRY BULK VESSELS CONSTRUCTED WITH THE AID OF CONSTRUCTION-DIFFERENTIAL SUBSIDY

Sec.
278.1 Statutory provision; section 905(a), Merchant Marine Act, 1936, as amended.
278.2 Scope of the regulation.
278.3 Definitions.
278.4 Charter approval required.
278.5 Failure to secure prior approval.
278.6 Additional requirements.

AUTHORITY: Sec. 204, Merchant Marine Act, 1936, as amended (49 Stat. 1987, as amended; 46 U.S.C. 1114).

SOURCE: General Order 111, 38 FR 14941, June 7, 1973, unless otherwise noted.

§ 278.1 Statutory provision; section 905(a), Merchant Marine Act, 1936, as amended.

SEC. 905. When used in this act—(a) The words "foreign commerce" or "foreign trade" mean commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 607 of this act concerning capital construction funds and in the context of title V of this act concerning construction-differential subsidy, the said words "foreign commerce" or "foreign trade" shall also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 204(b) of this act.

§ 278.2 Scope of the regulation.

The rules of this part govern the extent to which liquid and dry bulk vessels constructed with the aid of construction-differential subsidy may be employed in the foreign-to-foreign trade. Owners of such vessels operating under charters for periods in excess of 5 years must submit their charters to the Maritime Administrator for approval prior to execution. In general, charters in excess of 5 years will be approved if, based upon the terms of the charter and taking into consideration the nature of the business of the charterer, the Maritime Administrator finds that the vessel may reasonably be expected to be employed to a significant extent during the period of the charter in the U.S. export-import commerce. Where, under the terms of the charter or other relevant considerations, it appears that the vessel will be committed to foreign-to-foreign trade, charters in excess of 5 years may be approved if the Maritime Administrator finds that such approval will provide demonstrable benefits under the maritime or other national policies of the United States.

§ 278.3 Definitions.

(a) *Act.* The term "Act" shall mean the Merchant Marine Act, 1936, as amended.

(b) *Maritime Administrator.* The term "Maritime Administrator" shall mean the Maritime Administrator, Department of Transportation or his authorized representative pursuant to the act or to any reorganization plan, organizational order, administrative order or regulation published thereunder. Charters, and any questions, requests or supplemental information may be submitted to the Maritime Administrator through the Secretary, Maritime Administration, Department of Transportation, Washington, DC 20590.

(c) *Bulk vessel.* The term "bulk vessel" shall mean a vessel which is built to carry solid, liquid, or gaseous commodities not normally shipped in bags or rigid containers and which are normally contained in the vessel's storage spaces bound only by the ship's structure.

(d) *Charter.* The term "charter" shall mean any agreement between two or more parties which governs the operations in which the vessel may engage, including extensions of original charter period, any subcharters, or subsequent agreements.

(e) *Foreign-to-foreign commerce.* The term "foreign-to-foreign commerce" shall mean that portion of foreign commerce referred to in section 905(a), Merchant Marine Act, 1936, as amended, in which cargo is carried by U.S.-flag bulk vessels between foreign ports.

(f) *Statutory life.* The term "statutory life" shall mean the statutory life of a vessel under section 503, Merchant Marine Act, 1936, as amended, and Pub. L. 86-518, as amended by Pub. L. 88-225.

§ 278.4 Charter approval required.

(a) *Charters in excess of 5 years.* Charters on vessels subject to the regulation of this part which exceed 5 years' duration or which may be extended beyond 5 years' duration by exercise of an option either within the charter or contained in a separate agreement shall be submitted to the Maritime Administrator for his review and approval at least 30 days prior to execution of such charter by the parties. No such charter shall take effect without the prior written approval of the Maritime Administrator.

(b) *Charters of 5 years or less.* Charters on vessels subject to the regulation of this part which do not exceed 5 years' duration and which contain no provisions for extension beyond 5 years need not be submitted to the Maritime Administrator for approval unless otherwise specifically required by agreement. Vessels operating under such charters are free to engage in foreign-to-foreign commerce without approval of the Maritime Administrator.

(c) *Approval required during statutory life of vessel.* The regulation of this part applies only during the statutory life of a vessel. After the expiration of that period, the vessel may be chartered for employment in the foreign-to-foreign trade regardless of the duration of the charter period without the approval of the Maritime Administrator.

§ 278.5 Failure to secure prior approval.

The owner of any vessel upon which a charter is executed in violation of this part shall be liable to pay to the Board an amount which bears the same proportion to the total construction-differential subsidy paid on the vessel as the period of each voyage leg in the foreign-to-foreign trade bears to the statutory life of the vessel. For this purpose a ballast leg between two cargo-carrying voyage legs in the foreign-to-foreign trade will be treated as a voyage leg in the foreign-to-foreign trade. A ballast leg between a cargo-carrying voyage leg in the foreign-to-foreign trade and a cargo-carrying voyage leg in the U.S. export-import trade will be treated as a voyage leg in the U.S. export-import trade. The amount due shall be payable within 90 days after the termination of the calendar year in which the voyage or voyages in the foreign-to-foreign trade occurred. Interest on all amounts payable shall accrue at a rate of 8 percent per annum from the date of delivery of the vessel until payment thereof is made.

§ 278.6 Additional requirements.

(a) *Submissions required with each application for approval.* The owner shall submit, as part of any application for the approval of a charter, a statement of the reasons why such application should be approved and factual information in support of such reasons. The Maritime Administrator may request such additional information from the owner or operator as he may require to act on the application.

(b) *Use of business records.* The Maritime Administrator may from time to time request that an owner or operator of bulk vessels constructed with the aid of construction-differential subsidy submit records of ship movements.

(c) *Certification of compliance.* Within 15 days after the end of each calendar year, owners subject to the regulation of this part shall certify that during the previous calendar year the regulated vessels were operated in compliance with these regulations.

PART 279—OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS IN UNITED STATES FOREIGN COMMERCE ON THE GREAT LAKES, CONNECTING RIVERS, ST. LAWRENCE RIVER, AND GULF OF ST. LAWRENCE

Sec.
279.1 Purpose.
279.2 Definitions.
279.3 Determination of subsidy.

AUTHORITY: Sec. 204(b), 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 115, 37 FR 7979, Apr. 22, 1972, unless otherwise noted.

§ 279.1 Purpose.

The purpose of this part is to prescribe regulations concerning the operating-differential subsidy program under title VI of the Merchant Marine Act, 1936, as amended, relating to the operation of U.S.-flag bulk cargo vessels engaged in U.S. foreign commerce between U.S. ports on the Great Lakes, connecting rivers, and St. Lawrence River and Canadian ports on the Great Lakes, connecting rivers, St. Lawrence River, and Gulf of St. Lawrence.

§ 279.2 Definitions.

For purposes of this part:

(a) *Subsidized voyage.* For purposes of eligibility for operating-differential subsidy participation, pursuant to sections 601(a) and 605(a) of the Act, a subsidized voyage (1) shall commence at the time a vessel is free of cargo: *Provided,* That said vessel proceeds to load export or import commerce of the United States at the same port or other United States port or Canadian port, and shall terminate at the time said vessel completes discharging such import or export cargo: *Provided, however,* That in the event said vessel sustains a period of idleness, deviation, or delay for any reason, the operator shall report said circumstances, together with all pertinent facts, to the Maritime Administration, and the Maritime Administration shall determine whether such period of idleness, deviation, or delay could not have been avoided in whole or in part through efficient and economical operation and whether subsidy shall be payable in whole or in part for such period; and (2) is a voyage in which the vessel engages exclusively in the carriage of foreign commerce of the United States; a voyage will not be subsidized if a vessel carries both domestic and foreign commerce of the United States simultaneously.

(b) *Competitive vessels.* The Maritime Administration will make a determination annually of the volume of bulk cargoes carried by foreign-flag vessels in the trades described in this part. Utilizing the data thus developed, foreign-flag competition shall be determined for operating-differential subsidy purposes. The foreign flags deemed competitive shall be limited to those flags carrying 15 percent of more of the total bulk tonnage carried in all foreign-flag vessels in the areas described in this part, provided that the flag(s) so selected must carry an aggregate of not less than 60 percent of the total tonnage moved in the foreign-flag ships.

§ 279.3 Determination of subsidy.

(a) For purposes of this part, operating-differential subsidy shall be paid for the wage costs of the U.S. officers and crews, the fair and reasonable cost of insurance, maintenance and repairs not compensated by insurance, attributable to subsidized voyages and to annual out of service periods, as provided in this section.

(b) Procedures for determining subsidy.

(1) U.S.-foreign wage cost differentials for subsidized vessels shall be determined in accordance with procedures established by the Maritime Administration pursuant to section 603 of the Act. The normal manning of the subsidized vessels and the normal manning of comparable foreign-flag vessels shall form the basis for establishing wage cost differentials;

(2) The annual costs of insurance premiums, maintenance, and repairs not compensated by insurance for subsidized vessels, after application of the appropriate U.S.-foreign cost differential percentages, shall be expressed in per diem amounts of subsidy based upon the actual number of days in the navigating season for that year for the vessel(s) included in the operating-differential subsidy contract: *Provided*, That said vessel(s) operate a substantial part of the navigating season;

(3) In addition to per diem wage subsidies which are earned for subsidized voyage days under paragraph (b)(1) of this section: (i) Wage subsidy will be paid for crew wage costs incurred for subsidized vessels during annual out-of-service periods; the amount of operating-differential wage subsidy payable for such periods will be determined by first applying the U.S.-foreign wage differential percentage to the wage costs actually incurred for the subsidized vessel(s) during such period, and then multiplying the resultant amount by a fraction, the numerator of which shall be the number of subsidized voyage days during the navigating season and the denominator of which shall be the total actual navigating days for that season; and (ii) contractor's absorptions for crew claims under the protection and indemnity insurance policy for claims arising during subsidized voyages shall be subsidized to the extent that such costs exceed comparable absorptions of the foreign-flag competition.

(4) Subsidized voyages and per diem subsidy amounts accruing thereon shall be determined in whole and fractional days based upon the actual elapsed time of such subsidized voyage(s).

(c) For purposes of determining subsidy under this section, subsidized vessels may be appropriately grouped, or treated separately, at the discretion of the Maritime Administration.

PART 280—LIMITATIONS ON THE AWARD AND PAYMENT OF OPERATING-DIFFERENTIAL SUBSIDY FOR LINER OPERATORS

Sec.

280.1 Purpose.
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280.3 Standards governing award of an ODS agreement.
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280.11 Example of calculation and sample report.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114) Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91–469 (84 Stat. 1036) Department of Commerce Organization Order 10–8 (38 FR 19707, July 23, 1973).

SOURCE: 42 FR 61460, Dec. 5, 1977, unless otherwise noted.

§ 280.1 Purpose.

The purpose of this part is to prescribe regulations governing the award of operating-differential subsidy agreements and payment of operating differential subsidy to liner operators under Title VI of the Merchant Marine Act, 1936, as amended, as interpreted by the Maritime Subsidy Board in Docket No. S–244.

§ 280.2 Defintions.

For purposes of this part only:

(a) *Commercial cargo* means cargo other than military cargo and civilian preference cargo.

(b) *Military cargo* means that cargo required to be carried on a U.S.-flag vessel by 10 U.S.C. 2631.

(c) *Civilian preference cargo* means any cargo other than military cargo required by law to be carried on a U.S.-flag vessel, including, but not limited to, cargo required to be carried on a U.S.-flag vessel by 15 U.S.C. 616a and 46 U.S.C. 1241(b).

(d) *Conference-rated civilian preference cargo* means any civilian preference cargo moving at rates set by an international rate conference.

(e) *International rate conference* means any formal organization of competing carriers established for the purpose of setting shipping rates.

(f) *Open-rated civilian preference cargo* means any civilian preference cargo moving at a rate other than a set rate established by an international rate conference.

(g) *Open-rated civilian preference cargo carried at the world rate* means any open-rated civilian preference cargo that is considered pursuant to § 280.5 not to be carried at a premium rate.

(h) *Competitive cargo* means commercial cargo, conference-rated civilian preference cargo, and open-rated civilian preference cargo carried at the world rate.

(i) *Secretary* means the Secretary of the Maritime Administration, Department of Transportation.

(j) *Region Director* means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(k) *Operator* means any individual, partnership, corporation or association that contracts with the United States Government under Title VI of the Act to receive ODS.

(l) *Board* means the Maritime Subsidy Board of the Maritime Administration, Department of Transportation.

(m) *Act* means the Merchant Marine Act, 1936, as amended.

(n) *Operating-differential subsidy* (*ODS*) means, except as the operator and the United States Government shall agree upon a lesser amount, the excess of the cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel.

(o) *Gross freight revenue* means total gross receipts earned from the carriage of cargo (other than mail) in the U.S. foreign commerce.

(p) *Miscellaneous gross revenue* means total gross receipts earned in the U.S. foreign commerce from the carriage of passengers and mail plus miscellaneous voyage revenues.

(q) *Inbound gross freight revenue* means gross freight revenue earned from the carriage of cargo in foreign commerce inbound to the United States.

(r) *Outbound gross freight revenue* means gross freight revenue earned from the carriage of cargo in foreign commerce outbound from the United States.

(s) *Wayport gross freight revenue* means gross freight revenue earned from the carriage of cargo between foreign ports.

(t) *Total gross revenue* means the sum of inbound gross freight revenue, outbound gross freight revenue, wayport gross freight revenue and miscellaneous gross revenue.

(u) *Service* means any essential service in the foreign commerce of the United States under section 211(a) of the Act for which an ODS agreement has been entered into by the operator and the United States.

(v) *ODS payable on the inbound leg of a service* means the inbound gross freight revenue of the service divided by the total gross revenue of the service times the ODS payable for the service.

(w) *ODS payable on the outbound leg of a service* means the outbound gross freight revenue of the service divided by the total gross revenue of the service times the ODS payable for the service.

(x) *U.S. foreign commerce* means the commerce or trade between the United States, its territories or possessions, or the District of Columbia and a foreign country.

§ 280.3 Standards governing award of an ODS agreement.

No ODS agreement, including any amendments thereto concerning additional services or revised service area, shall be made under Title VI of the Act, unless the applicant establishes in its application to the satisfaction of the Board, that the vessel operations proposed to be subsidized will be conducted in a manner which will not preclude the applicant from earning at least 50 percent of its inbound gross freight revenue and at least 50 percent of its outbound gross freight revenue for each service covered by the application from the carriage of competitive cargo.

§ 280.4 Standards governing payment of ODS.

(a) *Full payment.* Except to the extent otherwise provided in § 280.8, ODS shall be paid in full to the operator for vessel operations on the inbound and outbound legs of each service if, during the calendar year, at least 50 percent of the inbound and 50 percent of the outbound gross freight revenues earned on voyages terminated during the calendar year, for each service, are earned from the carriage of competitive cargo.

(b) *Reduction in payment*—(1) *Inbound leg of service.* The amount of ODS payable for the inbound leg of a service for the calendar year shall be reduced as provided in paragraph (b)(3) of this section if, during the calendar year, less than 50 percent of the inbound gross freight revenue earned in such service, on voyages terminated during the calendar year, is earned from the carriage of competitive cargo.

(2) *Outbound leg of service.* The amount of ODS payable for the outbound leg of a service for the calendar year shall be reduced as provided in paragraph (b)(3) of this section if, during the calendar year, less than 50 percent of the outbound gross freight revenue earned in such service, on voyages terminated during the calendar year, is earned from the carriage of competitive cargo.

(3) *ODS reduction formula.* The reduction in ODS payable required by paragraphs (b) (1) and (2) of this section for any calendar year shall be made by reducing the amount payable on one or more ODS vouchers for the subsequent calendar year by a cumulative amount equal to an amount determined in accordance with the following table:

Percent of inbound or outbound gross freight revenue from carriage of competitive cargo	ODS reduction[1]
40 to 49.9	20
30 to 39.9	40
20 to 29.9	60
10 to 19.9	80
0 to 9.9	100

[1] Expressed in percent of total ODS payable for cargo carriage on the inbound or outbound leg of the service

(4) *Last calendar year exception.* The provisions of this paragraph do not apply to the last calendar year of an ODS agreement except to the extent that any reduction in ODS payable required by this section for the calendar year immediately preceding the last calendar year is to be made, pursuant to paragraph (b)(3) of this section, on ODS vouchers submitted in the last calendar year.

§ 280.5 Criteria for determining whether or not civilian preference cargo is carried at a premium rate.

Civilian preference cargo shall be considered to be carried at a premium rate unless carried:

(a) At the tariff commodity rate published in a conference tariff or at the stated minimum level or floor rate for an open-rated commodity published in a conference tariff, *Provided* That the international rate conference issuing such tariff commodity rate, stated minimum level, or floor rate has at least one foreign-flag carrier as a voting member, or

(b) At a rate or tariff agreement rate, or at the stated minimum level or floor rate for an open-rated commodity, established by a rate making group other than an international rate conference, *Provided*, That such rate making group has at least one foreign-flag carrier as a voting member, or

(c) At a rate approximately the same as or less, or at a rate that the subsidized operator by use of indices or other mechanism can demonstrate is reasonably equated to or less, than a rate quoted or actually charged by a foreign-flag carrier for the same commodity with the same or a competitive origin and destination and within a reasonably similar time period. This paragraph is applicable to, but is not limited to, rates:

(1) Established by a conference or other rate making group that has only U.S. flag carriers as voting members;

(2) Quoted by an individual member of an international rate conference or other rate making group with permits an individual member to negotiate or otherwise establish its own rate; or

(3) Quoted by a carrier and not published in any conference tariff.

§ 280.6 Calendar year accounting.

Except as provided in § 280.9 (relating to the final year of an ODS agreement), the calculations required under this part for years after 1973 shall be on the basis of voyages terminated during the calendar year. Calculations for the calendar year 1973 shall be made on the basis of voyages commenced and terminated in 1973.

§ 280.7 Reporting and recordkeeping requirements.

(a) *Reporting requirement.* Except as provided in § 280.9 of this part (relating to the final year of an ODS agreement), each operator shall submit to the Secretary (two copies) and to the Region Director (one copy), by March 31 of the succeeding year, a report for each calendar year setting forth for each service; the total gross revenue, the miscellaneous gross revenue, the inbound and outbound gross freight revenues, the wayport gross freight revenue, and the outbound and inbound gross freight revenues earned from the carriage of military cargo and from the carriage of civilian preference cargo carried at premium rates as determined pursuant to § 280.5. See § 280.10(b) for the form of the report required to be submitted by this paragraph.

(b) *Recordkeeping requirement.* In support of each report submitted pursuant to this section or § 280.9, each operator shall:

(1) Maintain and make available for audit upon request, records for each service, outbound and inbound, which show for each item of civilian preference cargo carried during the calendar year, the name of the commodity carried according to the tariff desription, the rate at which it was carried, the world rate for the commodity for the same or a competitive origin and destination and within a reasonably similar time period, and whether or not the item was considered to have been carried at a premium rate, or

(2) Establish upon request to the satisfaction of the Region Director, by demonstration of its accounting system or by other reasonable means, that the report filed under paragraph (a) of this section is substantially correct.

(c) *Certification of report.* Each report submitted pursuant to this section or § 280.9 must be accompanied by a certification by a responsible official of the operator in the following form:

> I hereby certify to the best of my knowledge and belief that this report is complete and accurate and conforms to the requirements of 46 CFR Part 280.

(d) *Requirements for requesting confidentiality.* (1) Except as otherwise provided in this paragraph, the information contained in any report submitted pursuant to this section or § 280.9 is not entitled to be considered confidential for purposes of the Freedom of Information Act (5 U.S.C. 552).

(2) If an operator desires confidential treatment of any information contained in such a submitted report, the operator is required to file concurrently with each such report a written request for a determination of confidentiality.

(3) The operator shall include in any confidentiality request filed under this paragraph:

(i) A precise, item-by-item specification of the information in the report that the operator asserts is within one of the exemptions from disclosure in 5 U.S.C. 552(b);

(ii) A statement as to whether each identified item is treated as confidential by the operator and the steps taken by the operator to ensure that confidentiality; and

(iii) An explanation of how release of each identified item would cause substantial competitive injury to the operator, and the exact nature of that injury.

(4) An operator's general, unexplained assertions of exemption under section 552(b) are insufficient and the item or items concerned will not be considered for confidential treatment.

(e) *Determination.* (1) If it is determined that an exemption is applicable to an item or items of information which have been properly specified and supported in a confidentiality request under paragraph (d) of this section, the operator will be so notified in writing.

(2) If it is determined that no exemption is applicable to or that none will be asserted for an item of information included in a confidentiality request, the operator will be given a written statement of and reasons for that determination.

§ 280.8 Certain ODS agreement provisions not affected.

The provisions of this part are not intended to supersede contractual or other requirements dealing with sailings, and the carriage of full loads of military or bulk cargoes.

§ 280.9 Special rules for last year of ODS agreement.

(a) *Reduction in payment of ODS.* ODS payable during the last year of any ODS agreement shall be reduced, as provided in paragraph (b) of this section, if on a cumulative basis for each quarter of the calendar year:

(1) Less than 50 percent of the inbound gross freight revenue earned on the inbound leg of a service, or

(2) Less than 50 percent of the outbound gross freight revenue earned on the outbound leg of a service, is earned from the carriage of competitive cargo. Any reduction required by this paragraph is in addition to any reduction in ODS payable for the preceding calendar year as required by paragraph (b) (3) of § 280.4.

(b) *Amount and method of required reduction*—(1) *Quarterly voucher.* As required by paragraph (a) of this section, the amount payable on the ODS voucher for the last month of any quarter of the last calendar year is to be reduced by an amount determined by applying the table in paragraph (b)(3) of § 280.4 to the cumulative ODS payable.

(2) *Insufficient ODS payable*—(i) *Vouchers for subsequent months.* If the total amount of reduction required to be made pursuant to (b)(3) of § 280.4 or paragraph (b)(1) of this section or both, is greater than the amount of ODS payable on the ODS vouchers for the last month of the 1st, 2nd, or 3rd quarter of the last calendar year, the operator shall carry an amount equal to this excess forward to one or more of the months subsequent to such quarter of the last calendar year as a reduction in the ODS payable on the ODS voucher for any such subsequent months.

(ii) *Voucher in the final quarter.* If the amount of reduction required by paragraph (b)(1) of this secton is greater than the amount of ODS payable on the ODS voucher for the last month of the final quarter of the last calendar year, the Maritime Administrator may apply an amount equal to this excess as a reduction of any outstanding ODS payable to the operator for the last calendar year or any preceding years.

(c) *Reporting requirements.* During the last year of the ODS agreement the operator shall submit a report to the Secretary (two copies) and to the Region Director (one copy) for each quarter of the calendar year, providing for each such quarter on a cumulative basis for the calendar year, the information required by paragraph (a) of § 280.7. The reports required by this paragraph shall be submitted concurrently with the operator's vouchers for the 3rd, 6th, 9th and 12th months of the calendar year. Each report submitted pursuant to this paragraph is also subject to the other applicable requirements of § 280.7.

(d) *Cumulative quarterly accounting.* The calculations required under this section shall be made on the basis of the cumulative voyages terminated from the beginning of the calendar year through the reported quarterly period.

(e) *Special procedures.* Whenever the Maritime Administrator, Department of Transportation determines that the provisions of this section may fail at any time to protect the interests of the Maritime Administration, the Maritime Administrator may take any measures necessary to ensure against an overpayment of ODS or to ensure the prompt repayment of any such overpayment.

§ 280.10 Waiver.

The Board has the power to waive the requirements of any provision of this part for a specific period of time under special circumstances and for good cause shown.

§ 280.11 Example of calculation and sample report.

(a) *Example of calculation.* The provisions of this part may be illustrated by the following example:

Company A operates several vessels engaged in carrying cargo, passengers and mail from the west coast of the United States outbound to foreign ports in the Far East, cargo between the foreign ports in the Far East, and cargo from foreign ports in the Far East inbound to the west coast of the United States. Company A's operation on this service is subsidized under an ODS agreement made in accordance with § 280.3. Total annual subsidy payable for Company A's service is $1 million. In 1976 Company A's total gross revenue was $10 million, computed as follows:

Outbound gross freight revenue	$4,000,000
Inbound gross freight revenue	4,000,000
Wayport gross freight revenue	1,000,000
Miscellaneous gross revenue	1,000,000
Total gross revenue	10,000,000

Of the $4 million outbound gross freight revenue $1,600,000, or 40 percent, was earned from carriage of competitive cargo. Of the $4 million inbound gross freight revenue $1,200,000, or 30 percent, was earned from carriage of competitive cargo. Accordingly, total ODS payable to Company A for voyages terminated during the calendar year 1976 is reduced by $240,000, from $1 million to $760,000, as follows:

OUTBOUND LEG OF SERVICE	
ODS payable (Outbound freight revenue, $4 million, divided by total gross revenue, $10 million, times total ODS payable for service, $1 million.)	$400,000
Percent reduction of ODS payable (40% carriage of competitive cargo requires 20% reduction in ODS payable.)	20%
Amount of reduction in ODS payable (20% of $400,000.)	$80,000
INBOUND LEG OF SERVICE	
ODS payable (Inbound freight revenue, $4 million, divided by total gross revenue, $10 million, times total ODS payable for service, $1 million.)	$400,000
Percent reduction of ODS payable (30% carriage of competitive cargo requires 40% reduction in ODS payable.)	40%
Amount of reduction in ODS payable	$160,000
Total amount of reduction in ODS payable ($80,000 plus $160,000.)	$240,000
Total ODS payable for service in 1976 (after reduction) ($1 million minus $240,000.)	$760,000

(b) *Sample report.* Reports providing the information required by §§ 280.7 and 280.9 shall be made in the following form:

MA-819 (COMPANY)

Report of Revenues Earned for ——[1] Pursuant to 46 CFR Part 280

Form Approval—OMB No. 41.R2954—15

	Trade Route No.		Trade Route No.		Trade Route No.	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
Outbound freight revenue:						
Military and Premium Rated Civilian						
Competitive						
Total Outbound Freight Revenue		100		100		100
Inbound freight revenue:						
Military and premium rated civilian						
Competitive						
Total inbound freight revenue		100		100		100
Wayport freight revenue						
Miscellaneous revenue						
Total gross revenue						

[1] Enter Calendar Year —— or Cumulative Quarterly Period Ending —— as applicable for the report being fi

PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER LINER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Sec.
281.1 Information and procedure required under liner operating-differential subsidy agreements.
281.2 Definitions.
281.3 Method of commencing and terminating voyages and of determining idle status.
281.4 Treatment of subsidy during idle status and off-hire period.
281.5 Right of Maritime Administrator to recover subsidy for any period of idleness.
281.6 Interpretation.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 606, 49 Stat. 2004, as amended; 46 U.S.C. 1176.

§ 281.1 Information and procedure required under liner operating-differential subsidy agreements.

In compliance with the terms of the operating-differential subsidy agreement, the following information shall be submitted to the Maritime Administration by each operator who is a party to any such agreement and operates liner type vessels pursuant to such agreement.

(a) *Sailing schedules, routes, etc.* (1) One copy of a list of sailings is required to be submitted not later than the 5th day of each month, listing each outbound sailing during the preceding month. Such list shall show for each such sailing: (i) Vessel name; (ii) voyage number; (iii) last continental U.S. port; (iv) sailing date; and (v) the service on which the sailing took place.

(2) A "Final Report" in five copies shall be submitted not later than 15 days after the end of the month in which the voyage is terminated and shall show: (i) The time and ports at which the voyage commenced and terminated; (ii) the arrival and sailing dates of the vessel at and from each United States and foreign port, including ports of call for bunkering and/or mail only; (iii) explanation of any delay in excess of 2 days at a United States or foreign port; (iv) appropriate notation of official authorization for any deviations from the service described in the applicable contract.

(3) The procedures outlined in paragraphs (a)(1) and (2) of this section shall be effective on the first of the month following publication in the FEDERAL REGISTER.

(4) The sailing schedules and lists of sailings specified in this paragraph shall be sent to the Division of Tra

Studies, Office of Subsidy Administration, Maritime Administration, Washington, DC 20590.

(b) *Condition of vessels, inspection and repairs.* (1) In order that the Maritime Administration may have an opportunity to participate in the inspection of the vessels, the operator is required to give at least twenty-four hours' notice to the Maritime Administration as to the time and place of making inspections. In the event the Maritime Administration's representative is not available, the operator shall employ an independent surveyor, who shall be satisfactory to the Maritime Administration, and proceed with inspection, and a report thereof shall be made to the Maritime Administration on forms MA-55, MA-56, MA-57, and MA-58, sworn to by persons making the inspection.

(2) The operator shall give due notice to the local office of the Division of Maintenance and Repair, at the port at which the vessel is to be available, of the port, date and time for the making of repairs or replacements in the United States.

(3) In connection with further requirements, reference is made to General Order 20 (Part 271 of this chapter) and supplements thereto for more detailed instruction.

(4) Vessel repairs are to be performed within the continental limits of the United States, except in emergency cases the necessity for which the operator should be prepared to justify upon audit.

(c) *Insurance.* (1) Immediately upon the binding of any insurance with respect to any vessel covered by the operator's subsidy agreement, there shall be submitted to the Division of Insurance Office of the Comptroller, Maritime Administration, Washington, DC 20590, for the Maritime Administration's approval, a signed copy of each cover note issued by the operator's brokers, which, to the extent applicable, shall set forth as to such vessel the amounts covered by hull, disbursements and other forms of total loss protection, as well as P and I insurance. Such cover notes shall include the rates, the amounts placed in the different markets, the companies interested, the policy numbers and the amount underwritten by each policy; also, there shall be shown the amount of the deductible average, if any. Upon request, policies shall be submitted to the Maritime Administration for examination and return.

(2) The Maritime Administration shall be advised promptly of any cancellation, changes in terms, or companies interested, and of any lay-up periods which will permit of the collection of return premiums, and of any major casualty or total loss which may occur.

(3) Insurance arranged in conformity with the requirements of applicable mortgages held by the United States will be deemed sufficient to comply with the requirements of the operator's operating-differential subsidy agreement.

(4) The Maritime Administration furthermore, wishes to emphasize its desire that as much of the American Merchant Marine insurance coverage as is practicable be placed in the American insurance market. Therefore, when a renewal of policies or new insurance is under negotiation by an operator subject to the provisions of this order, it is urgently requested that particular attention be given to the Maritime Administration's desire as herein expressed with regard to markets in which such insurance may be placed, and that the Maritime Administration be notified in ample time to give consideration to the pertinent facts and circumstances of each case, so that prior to the attachment of such insurance, approval thereof or suggested changes may be indicated.

(d) *Inventories.* Twenty-four hours' notice shall be given to the Maritime Administration as to the time and place of inventorying classification-required spare parts, ship's spare equipment, fuel and stores as are customarily inventoried and the cost of which is charged to the voyage accounts. If, upon giving the above-required notice, the Maritime Administration's representatives are not present, the operator is to proceed with his inventory in the normal way. The operator may use his own inventory forms, one copy of which shall be sworn to by the persons taking the inventory and included in the voyage accounting.

(e) *Partial payments on account.* When partial payments are desired on account of operating-differential subsidy accruals, the operator should communicate with the Comptroller, Maritime Administration, Washington, DC 20590, who shall forward necessary instructions and forms to be used.

(f) *Current financial reports.* Each operator shall prepare current financial reports as specified in this paragraph and shall submit one copy each to the appropriate Region Director of the Maritime Administration and three copies each to the Director, Office of Financial Analysis, Maritime Administration, Washington, DC 20590, as follows:

(1) *Internal management reports.* Each month the operator shall submit copies of such portions of its internal management reports that provide an estimate of its current operating results.

(2) *Quarterly balance sheets.* The operator shall prepare balance sheets as of March 31, June 30, and September 30 of each calendar year in conformity with section 282.6(A) of the Uniform System of Accounts (Part 282 of this chapter) and shall submit each as soon as practicable but not later than 45 days after the end of the respective quarter.

(3) *Quarterly and cumulative income statements.* The operator shall prepare income statements for the quarterly periods January 1, to March 31, April 1 to June 30, and July 1 to September 30, and for cumulative periods from January 1 to the end of the second and third quarters of each calendar year in conformity with section 282.6(B) of the Uniform System of Accounts (Part 282 of this chapter) and shall submit each statement as soon as practicable but not later than 45 days after the end of the respective quarter.

(4) *Annual financial report.* The operator shall submit Maritime Administration Form 172 for each calendar year by March 31 of the succeeding year. If the operator is unable to submit Form 172 by March 31 of the succeeding year he shall, prior to such March 31, request an extension for the filing of Form 172 from the Director, Office of Financial Analysis and shall submit by such March 31:

(i) A balance sheet for the year ending on December 31, in conformity with section 282.6(A) of the Uniform Systems of Accounts; and

(ii) An income statement for the quarterly period October 1 to December 31 and an income statement for the year ending on December 31, in conformity with section 282.6(B) of the Uniform System of Accounts.

(5) *Vessel performance reports.* Vessel performance reports shall be prepared for the period January 1 to March 31 of each calendar year, and from January 1 to the end of each succeeding quarter of the calendar year, in the form provided in Exhibit A of paragraph (f)(7) of this section and consistent with the allocation bases provided in paragraph (f)(6) of this section and shall include:

(i) A grand summary of all terminated voyage results for the reporting period including any idle status period occurring during the reporting period and any additional charges or credits from prior terminated periods;

(ii) Summaries of each service by vessel type, as indicated in Exhibit (D) of paragraph (7) of this section, as of December 31 of each year;

(iii) Individual reports by vessel for each idle status period occurring during any reporting period.

Vessel performance reports shall be submitted with the quarterly balance sheets and income statements required under paragraphs (f) (2) and (3) of this section and must be reconciled with voyage revenue and expense from all operations as reported in the income statement. "Depreciation Vessels" is an example of a reconciling item. Vessel performance reports which are properly prepared and filed will satisfy the reporting requirements for sub-schedules 3002 of the Maritime Administration Form 172.

(6) *Allocation bases.* The allocation bases to be applied in preparation of vessel performance reports required by paragraph (f)(5) of this section are as follows:

(i) *Terminal expenses.* Terminal expenses defined by accounts 855 through 866 of the Uniform System of

Accounts (section 282.3(E) of this chapter), including depreciation accounts, for each terminal shall be allocated between terminated and unterminated voyages on the basis of freight payable tons loaded and discharged on each vessel and voyage during the reporting period, except that in the case of terminals handling only one cargo carriage technology type (CCTT), which can be expressed in common units such as twenty-foot equivalent container units (TEU's) or the number of individual barges, such common unit may be used for allocating terminal expenses by vessel and voyage for each terminal, as shown in Exhibit B of paragraph (f)(7) of this section.

(ii) *Container/barge expense—(A) Allocation of expense.* Container/barge expense defined by accounts 867 through 899 of the Uniform System of Accounts (section 282.3(F) of this chapter), including depreciation accounts, shall be segregated between container and barge cost pools. Accounts 879, 880, and 894 shall be allocated between container and barge cost pools on an allocation basis developed by the operator.

(B) *Allocation of cost pools.* Container and barge cost pools shall be allocated among vessels by voyage and idle status for each vessel in the same ratio that the total container or barge capacity of each vessel multiplied by vessel days bears to the total container or barge capacity of the operator's entire fleet multiplied by vessel days. Total container or barge capacity of a vessel means the total container or barge capacity of the vessel, expressed in TEU's for containers and single units for barges, multiplied by the total number of containers or barges acquired for each available container or barge slot on the vessel. Vessel days means the number of days in the period for which an allocation of cost pools is being made. Containers and barges purchased by an operator for utilization in a particular trade route shall be allocated by vessel capacity among the vessels in the trade route for which they were purchased. See Exhibit C of paragraph (f)(7) of this section.

(iii) *Administrative and general expenses.* Administrative and general expenses defined by accounts 901 through 979 of the Uniform System of Accounts (section 282.3(G) of this chapter) shall be allocated to terminated voyages for each vessel type by service or for each vessel by voyage, as required by paragraph (f)(5) of this section, based on the ratio that total terminated voyage operating expenses (accounts 701-773 of the Uniform System of Accounts) plus total terminated voyage operating revenue (accounts 601-624 of the Uniform System of Accounts) for each bears to the total terminated voyage operating expense plus total terminated voyage operating revenue for the period, except that account 945 (advertising passengers) will be allocated directly to passenger vessels based on passengers carried, account 955 (contributions to pools) may be allocated as an administrative and general expense or directly to vessel and voyage based on pool statements, and that portion of accounts 960 and 961 (interest expense) representing interest on vessels shall be allocated to vessels and voyages in the same ratio that depreciation is distributed among all vessels in the fleet. In addition to the above exceptions, significant interest expenses related to purchases of containers and barges should be charged directly to container and barge pools prior to allocation of the container and barge pools.

(7) *Exhibits.*

A. Vessel performance report.[1]

B. Sample allocation of terminal expenses by vessel and voyage.

C. Sample allocation of container/barge expenses by vessel and voyage.

D. Examples of vessel types currently operated.

(g) *General.* All reports and other communications called for by the foregoing should be addressed to the Secretary, Maritime Administration, Washington, DC 20590.

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[1] Exhibit A filed as part of the original document.

EXHIBIT B—SAMPLE ALLOCATION OF TERMINAL EXPENSES BY VESSEL AND VOYAGE [1]

Type of facility	Vessel	Total units loaded and discharged		Voyage status end of the period		Ratio vessel/voyage to Total (percent)	Terminal cost by vessel/voyage		
		Voyage	Total units [2]	Terminated	Unterminated		Totals	Terminated	Unterminated
Container yard	Cont-1	1	500	500		31.7	$326.51	$326.51	
	LASH-2	1	359		359	22.7	233.81		$233.81
	LASH-2	2	260	260		16.5	169.95	169.95	
	B/B-4	1	110	110		6.9	71.07	71.07	
	Cont-6	1	200	200		12.7	130.81	130.81	
	Cont-6	2	150		150	9.5	97.85		97.85
					(a) 1,579	1,070	509	100.0	1,030.00
Container freight station/ break bulk	LASH-2	1	17,002	17,002		22.8	175.56	175.56	
	LASH-2	2	11,002		11,002	14.8	113.96		113.96
	RO/RO-3	1	30,525	30,525		41.0	315.70	315.70	
	B/B-4	1	1,000	1,000		1.3	10.01		
	Bulk-5	1	15,000	15,000		20.1	154.77	154.77	
					(b) 74,529	63,527	11,002	100.0	770.00
Barge terminal	LASH-2	1	37	37		68.5	445.25	445.25	
	LASH-2	2	17		17	31.5	204.75		204.75
					(c) 54	37	17	100.0	650.00

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[1] This allocation procedure shall be applied for each terminal maintained by an operator.

[2] (a) Units for container yard=twenty foot equivalent units (TEU's)
(b) Units for container freight station and break bulk operation=freight payable tons (FPT's).
(c) Units for barge terminal=number of barges unless barges differ in size. Barges of different capacity must be reduced to equivalent units.
(d) Other terminal facilities (not illustrated) handling many or all cargo carriage technology types will allocate period costs on freight payable tons load and discharged during the period.

EXHIBIT C—SAMPLE ALLOCATION OF CONTAINER/BARGE EXPENSES BY VESSEL AND VOYAGE

EXAMPLE

(A)	(B)	(C)	(D)		(E)	(F)	(G)	(H)	(I)	(J)
Service	Vessel	Voyage	Vessel days in period		Actual container capacity of vessel	Containers acquired for each slot	Total container capacity col. (E)×(F)	Allocation base col. (D)×(G)	Allocation percentages	Allocation of container pool
			Terminated	Unterminated						
	Calculations:									
A	Container-1	1	90		1,050	2	2,100	189,000	39.3	$162,967
B	LASH-2	1	60		450	4	1,800	108,000	22.4	92,887
C	LASH-2	2		30	450	4	1,800	54,000	11.2	46,444
	RO/RO-3	1	70		350	3	1,050	73,500	15.3	63,445
	RO/RO-3	I.S.	20		350	3	1,050	21,000	4.3	17,831
	Break-Bulk-4	1		90	100	4	400	36,000	7.5	31,101
	Totals		240	120				481,500	100.0	414,675

Assumptions:

Service A—One (1) Container vessel with an actual capacity of 1,050 containers with two (2) containers acquired for each container slot.

Service B—One (1) LASH vessel with an actual capacity of 450 containers with four (4) containers purchased for each container slot.

Service C—One (1) Roll on-roll off vessel with an actual capacity of 350 containers with three (3) containers acquired for each container slot.

W—One (1) Break-bulk vessel with an actual capacity of 100 containers with four (4) containers acquired for each container slot.

Total container pool costs for a ninety (90) day period equals $414,675.

EXHIBIT D—EXAMPLES OF VESSEL TYPES CURRENTLY OPERATED

C3-S-33a
C3-S-38a
C3-S-43a
C3-S-46a
C3-S-46b
C3-S-73b
C3-S-76a
C4-S-1a
C4-S-1l
C4-S-1g
C4-S-1sa
C4-S-1t
C4-S-1u
C4-S-19a
C4-S-49a
C4-S1-49a
C4-S-57a
C4-S-58a
C4-S-60a
C4-S-64a
C4-S-64b
C4-S-65a
C5-S-37e
C5-S-37f
C5-S-73b
C5-S-75a
C5-S-78a
C6-S-1ga
C6-S-1gc
C6-S-1w
C6-S-1x
C6-S-1xa
C6-S-6gc
C6-S-85a
C6-S-85b
C7-S-68c, d, and e
C8-S-81b
C8-S-82d
C9-S-81d

(Approved by the Office of Management and Budget under control number 2133-0009)

[G.O. 12, Rev., 14 FR 4785, Aug. 6, 1949, as amended by Supp. 2, Amdt. 1. 21 FR 328, Jan. 17, 1956; 33 FR 2944, Feb. 14, 1968; Supp. 3, Amdt. 3, 34 FR 13369, Aug. 19, 1969; 40 FR 7430, Feb. 20, 1975; 47 FR 25530, June 14, 1982]

§ 281.2 Definitions.

As used in §§ 281.2 through 281.6 of these regulations, except as otherwise indicated by the context;

(a) The word "operator" means an operator receiving operating-differential subsidy under title VI of the Merchant Marine Act, 1936, as amended (Act), for a voyage on an essential service as described in section 211(a) of the Act;

(b) The term "Maritime Administrator" means Maritime Administrator, Department of Transportation;

(c) The term "Region Director" means the Region Director of the Maritime Administration having jurisdiction over the port or ports involved;

(d) The term "idle status" means any period in port between or during voyages for which the vessel's normal crew complement is reduced by 10 percent or more and "division of wages" is not paid for the missing men. The idle status period shall continue up to, but not including, the day that the vessel is remanned to the extent that the vessel's normal crew complement is restored to more than 90 percent or "division of wages" is paid for the missing men, or the vessel is temporarily or permanently withdrawn from subsidized service;

(e) "Normal crew complement" means the basic crew complement which has been approved for operating-differential subsidy under the provisions of section 603 of the Act, or as established by collective bargaining or other agreement for the voyage involved, whichever is less.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.3 Method of commencing and terminating voyages and of determining idle status.

(a) *Voyage commencements.* Voyages shall commence as of 12:01 a.m. of the day that loading of cargo, stores, or fuel begins, or as of 12:01 a.m. of the day following the termination of the prior voyage or, in the event that an idle status period follows a voyage termination, as of 12:01 a.m. of the day following the day on which such idle status period ends.

(b) *Voyage termination.* Voyages shall terminate at a U.S. port of call at midnight of the day of completion of paying off the crew from foreign articles, or the completion of final discharge of cargo or ballast at the last U.S. port of discharge, or the completion of voyage repairs, whichever event occurs last: *Provided, however,* That if a vessel sails outward on a new voyage prior to midnight of the same day, the inward voyage shall terminate as of midnight of that day, and the outward voyage shall commence as of 12:01 a.m. of the succeeding day, and that where a portion of any particular voyage overlaps a portion of the next succeeding voyage and the quantity of inward cargo remaining aboard at the port at which major cargo activities for the outward voyage are begun does not, in the opinion of the operator, justify extension of the inward voyage beyond that port, the operator shall immediately request the Region Director for permission to treat the inward voyage as having terminated at midnight of the day specified in such request and shall advise the Region Director what cargo has been and is still to be discharged and loaded at each port of the inward voyage; and that where, in the opinion of the operator, voyages as a general practice should terminate at the home or terminal port rather than at the last port of discharge, or a voyage should terminate on the day prior to commencement of an idle status period, or on the day that the voyage would have terminated had strikes not interfered with normal operations, application for such terminations may be made to the Region Director, and in such cases the voyage termination date shall be as approved by the Region Director. The Region Director shall promptly advise the operator of his determination approving or disapproving any request filed under this paragraph (b), and the Region Director's decision as to such termination shall prevail, provided that all terminations shall be as of midnight of the day specified.

(c) *Idle status periods.* Idle status periods shall be identified separately, whether occurring during or between voyages, and, if occurring during a voyage shall be identified with the applicable voyage number. A separate accounting period shall be created to cover each idle status period, and all such periods shall be reported to the Region Director.

(d) *Excessive delays.* Whenever a vessel is delayed in port for a period of 10 days or more in excess of its normal period of operations in said port, the operator immediately shall report said circumstances, together with all pertinent facts, to the Region Director. The Region Director shall determine whether or not said delay was justified and if operating costs for said period were reduced to a minimum in accordance with sound commercial practice.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.4 Treatment of subsidy during idle status and off-hire period.

During an idle status period, subsidy shall be payable only for such subsidizable items of expenses as are determined by the Maritime Administrator, after presentation by the operator of the facts relating to such idle status period, to be necessary for the maintenance, preservation, repair, or husbanding of the vessel during and under the circumstances involved; however, the Maritime Subsidy Board reserves the right to suspend at any time the payment of subsidy on idle vessels when, after consideration of the facts and circumstances regarding such period, it determines that an unreasonable period has elapsed or such idle period was not warranted: *Provided,* That as to a chartered ship operated under a "Use Agreement", operating-differential subsidy shall cease to accrue to the ship simultaneously with the time it goes "off hire" and subsidy shall not again accrue to said ship until it is reemployed in the subsidized service as determined in accordance with § 281.3. Nothing herein shall limit any other rights of the United States with respect to the payment or nonpayment of subsidy.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.5 Right of Maritime Administrator to recover subsidy for any period of idleness.

The Maritime Administrator may, prior to payment of subsidy for any voucher period which includes a period of idleness, require the operator to establish to the satisfaction of the Maritime Administrator that such period of idleness could not have been prevented in whole or in part through efficient and economical operation. The Maritime Administrator may recover any payment of subsidy for any item of expense allocable to such period of idleness which in the opinion of the Maritime Administrator could have been avoided by efficient and economical operation.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.6 Interpretation.

All questions of interpretation arising under the sections of this part shall be submitted to the Maritime Administrator for determination, whose decision thereon shall be final.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

PART 282—OPERATING-DIFFERENTIAL SUBSIDY FOR LINER VESSELS ENGAGED IN ESSENTIAL SERVICES IN THE FOREIGN COMMERCE OF THE UNITED STATES

Subpart A—Introduction

Sec.
282.1 Purpose.
282.2 Definitions.
282.3 Waivers.

Subpart B—Foreign-Flag Competition

282.10 Basis for determining foreign-flag competition.
282.11 Ranking of flags.

Subpart C—Calculation of Subsidy Rates

282.20 Amount of subsidy payable.
282.21 Wages of officers and crew.
282.22 Maintenance (upkeep) and repairs.
282.23 Hull and machinery insurance.
282.24 Protection and indemnity insurance

Subpart D—Subsidy Payment and Billing Procedures.

282.30 Payment of subsidy.
282.31 Subsidy billing procedures.
282.32 Appeal procedures.

AUTHORITY: Secs. 204(b), 603, 606 Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66.

SOURCE: 51 FR 34609, Sept. 30, 1986, unless otherwise noted.

Subpart A—Introduction

§ 282.1 Purpose.

This part prescribes regulations implementing Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171-1176 and 1178-1181) governing operating-differential subsidy for liner vessels engaged in essential services in the foreign commerce of the United States.

§282.2 Definitions.

When used in this part:

(a) Act means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) Board means the Maritime Subsidy Board of the Maritime Administration (MARAD).

(c) Contracting Officer means the Associate Administrator for Maritime Aids.

(d) Fiscal Period means any annual period beginning on July 1 and ending on June 30.

(e) Foreign-flag competition means those foreign-flag vessels deemed by the Maritime Administrator to be competitive with the subsidized vessel.

(f) Maritime Administrator means the Maritime Administrator, Maritime Administration of the Department of Transportation.

(g) Operating day means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of an operating-differential subsidy agreement.

(h) Operating-differential subsidy (ODS) means, except as the operator and the United States Government should agree upon a lesser amount, the excess of cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel.

(i) Operating-differential subsidy agreement (ODSA) means the Agreement entered into by the operator and the United States Government for the payment of operating-differential subsidy.

(j) ODS rate means the method adopted by the Maritime Administrator for determining the amount of ODS that is to be paid for an item of subsidizable expense.

(k) Operator means any individual, partnership, corporation or association that contracts with the United States Government under Title VI of the Act to receive ODS.

(l) Reduced crew period means a period in port between or during voyages when the subsidized vessel's approved crew complement is reduced by 10 percent or more and division of wages (wages of an absent seaman are divided among the seamen who provide the absent seaman's work) is not paid for the missing men.

(m) *Region Director* means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(n) *Subsidized service* means the operation of a vessel, other than in the coastal or intercoastal trade, in accordance with the terms and conditions of the ODSA.

(o) *Subsidized vessel* means a vessel covered by an ODSA.

(p) *U.S. foreign commerce* means the commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country.

(q) *Vessel* means subsidized vessel, unless otherwise specified.

§ 282.3 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in writing, by mutual agreement of the parties, in keeping with the circumstances then present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Subpart B—Foreign-Flag Competition

§ 282.10 Basis for determining foreign-flag competition.

The foreign-flag competition shall form the basis for determining the cost disadvantage of operating the subsidized vessels in the essential service. The Maritime Administrator shall determine the foreign-flag competition from those countries that have carried a significant amount of cargo in the service by using the following procedures:

(a) The primary source of information shall be commodity import/export data compiled by the Bureau of the Census. Cargo data shall be compiled in long tons. Trade publications which show advertised sailings shall be used to verify the liner services offered by foreign-flag operators.

(b) The U.S. import/export data shall be compiled by reference to countries actually served by the subsidized operator, using the subsidized operator's own competition data for each country to eliminate the flags which are not substantial competitors with the subsidized vessels. An example of the weighting procedure follows:

EXAMPLE

	Country A	Country B	Country C	Total
I. Determination of U.S.-Flag Weights:				
U.S. Subsidized Carrier	300	500	200	1,000
Percent	30	50	20	100
II. Actual Foreign-Flag Carryings:				
Flag 1	1,500	500	1,000	3,000
Flag 2	4,000	6,000	0	10,000
Flag 3	5,000	2,000	5,000	12,000
III. Adjusted Foreign-Flag Carrying (Actual Foreign x U.S. wts):				
Flag 1	450	250	200	900
Flag 2	1,200	3,000	0	4,200
Flag 3	1,500	1,000	1,000	3,500
				8,600
IV. Competition Computation:				
Flag 2	4200/8600	49.0		55.0
Flag 3	3500/8600	41.0		45.0
		90.0		100.0

(c) The principal foreign flags shall be those countries whose cargo carrying would rank the flag among those carriers that aggregate at least 50 percent of the total foreign-flag carryings.

(d) The total cargo carryings of each principal foreign flag shall be expressed as a percentage of total cargo carryings of all principal flags on the service. The resultant ratio shall be applied to the costs of that principal flag for determining its portion of the composite foreign cost, which shall be used for establishing the cost disadvantage of U.S. vessles in the service.

(e) The determination of the principal competitors and competition weight factors shall be based upon the import/export data for the twelve months of the penultimate calendar year preceding January 1 of the subsidized year to allow several months to collect foreign cost data.

§ 282.11 Ranking of flags.

The operators under each principal foreign flag shall be ranked as predominant, secondary, etc., for the purpose of establishing the priority of costs which are representative of the flag. For liner cargo vessels, the ranking of operators shall be based on the long tons of cargo carried.

(a) If the predominant operator is an agent, charterer or a joint venture in which the vessels are owned by two or more lines, under the name of such agent, charterer or joint venture, the predominant operator shall be the owner whose vessels carried the most cargo.

(b) If cost experience cannot be obtained for the foreign-flag operators in the subsidized service, MARAD may use the costs of another service, following the same ranking of operators, if possible.

Subpart C—Calculation of Subsidy Rates

§ 282.20 Amount of subsidy payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 282.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule D at § 282.31 of this part.)

(c) *Review of Rates.* Daily subsidy rates shall be reviewed every six months. For the item "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by the Maritime Administration. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Maritime Administrator for consideration in determining subsidy rates.

§ 282.21 Wages of officers and crew.

(a) *Definitions.* When used in this part.

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Maritime Administrator establishes a base period cost. At intervals of not less than two years

nor more than four years, the Maritime Administrator shall establish a new base period. Base periods shall be announced by the Maritime Administrator prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the averaged of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

	Minimum (percent)	Maximum (percent)
Base period following a:		
2-year cycle	97½	102½
3-year cycle	96¼	103¾
4-year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other govrernmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period in the index described above. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Example of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of two days); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC)* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA-790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the [illegible] costs as of January 1. Schedule [illegible] Form MA-790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by January 1 of the subsidized year. Schedule B of Form MA-790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA-790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example calculation.* The following is a sample of calculation of CBC and WC:

ABC STEAMSHIP COMPANY

January 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

	Per diem	
	WC	CBC
Crew complement	[1] 35	[2] 31
Fixed costs as of January 1, 1985:		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	5.75	5.75
Vacation pay	1,189.60	1,109.65
Pension, welfare, training, unemployment fund contributions	1,280.80	1,171.75
Total fixed	$4,265.94	$3,858.75
Variable costs as of January 1, 1985:		
Variable cost factor (based on 1984 cost experience) (in percent)	104.69	104.69
Total variable costs (January 1, 1985, base wages x variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of January 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.

[2] Approved manning complement.

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitors shall be constructed for the subsidized vessel type using the manning scales and practices of the competitors as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitors shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign cost percentage.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE 21—JANUARY 1, 1985—FOREIGN WAGE COST (FC)

	United States	Belgium	United States	Germany		Netherlands	United States	Norway
Crew Complement	35	35	35	23		22	35	28
Base Wages	[1]53,687	[1]24,779	[1]53,687	[1]25,192		[1]23,127	[1]53,687	[1]27,257
Allowances	[1]1,074	[1]4,584	[1]1,074	[1]8,879		[1]3,097	[1]1,074	[1]289
Vacation Pay (leave)	[1]35,681	[1]13,009	[1]35,681	[1]9,912		[1]9,499	[1]35,681	[1]11,976
Pension and Welfare	[1]38,407	[1]2,065	[1]38,407	[1]124		[1]3,923	[2]36,342	[1]124
Social Security	[2]6,608	[2]7,227	[1]3,717	[1]6,814		[1]4,584	[2]6,608	[2]10,118
Overtime and other variable costs (not elsewhere included)	[2]48,732	[2]10,944	[2]48,732	[2]10,325		[2]7,021	[2]48,732	[2]12,389
Repatriation								[2]413
Total wage costs	184,189	62,608	181,298	61,246		51,251	182,124	62,566

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE 21—JANUARY 1, 1985—FOREIGN WAGE COST (FC)—Continued

	United States	Belgium	United States	Germany		Netherlands	United States	Norw
Unweighted Percentage FC to WC		33.99%		33.78%		28.27%		34.3
Competition Weight Factor		22.1%		19.6%		19.1%		38.2
Weighted Percentage		7.51%		6.62%		5.40%		13.4
Composite Weighted Percentage					33.00%			

[1] Based on Jan. 1 priced out cost.
[2] Based on cost experience.
[3] Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs* (*UTC*) are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate or, in the alternative, a lump sum amount will be paid for special lump sum assessments or for per man-day increases to benefit plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses are eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefit funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC STEAMSHIP CO., INC., TRADE ROUTE 21

[Calculation of wage subsidy rates*]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Base period	Interim period	U.S. wage cost	Collective bargaining cost	Application of BLS index to base period cost	Averaging in base periods (4)+(5)	Appropriate limits	Base period cost	Subsidizable wage cost	Composite weighted percentage	Composite foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
					2							
1981		4,162.60	3,850.29				3,850.29	3,850.29	32.99	1,373.24	2,477.05	64.33
	1982	4,578.24	4,230.15	3,850.29×1.0845=4,175.64		.9×(4)=3,807.14 1.1×(4)=4,653.17		4,175.64	32.98	1,509.90	2,665.74	63.84
	1983	5,013.80	4,560.38	3,850.29×1.1816=4,549.50		.9×(4)=4,104.34 1.1×(4)=5,016.42		4,549.50	36.15	1,812.49	2,737.01	60.16
	1984	5,539.40	4,966.90	3,850.29×1.2992=5,002.30		.9×(4)=4,470.21 1.1×(4)=5,463.59		5,002.30	34.77	1,926.05	3,076.25	61.50
1985		6,139.57	5,504.06	3,850.29×1.4044=5,407.35	5,455.71	.95×(4)=5,228.86 1.05×(4)=5,779.26	5,455.71	5,455.71	33.00	2,026.06	3,429.65	62.86

*This computation is based on a new vessel entering subsidized service in May 1981.

[51 FR 34609, Sept. 30, 1986, as amended at 54 FR 5088, Feb. 1, 1989]

§ 282.22 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost Survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL—YEAR—1985—U.S. EAST COAST—FOREIGN COUNTRY—UNITED KINGDOM

Repair category	Foreign price	U.S. price
Drydocking & Underwater Repairs	$49,598	$70,882
Boiler Repairs	18,938	20,207
Machinery Repairs	33,004	36,193
Hull and Deck Repairs	16,729	20,863
Electrical Repairs	11,868	11,117
Exterior Painting	5,456	7,974
Interior Painting	681	1,192
Estimate Totals	$136,274	$168,240

Foreign/U.S. Price Ratio—81%
Country Cost Differential (100-81)—19%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels there are three basic types of surveys—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *Proportionate cost differential.* A proportionate cost differential for each principal foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country and by adding the resulting weighted percentages for all countries where repair work was performed.

(5) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be determined by multiplying the proportionate cost differential for each principal foreign-flag competitor by the competition weight factor for that competitor, and by adding the resulting differentials for all principal foreign-flag competitors, as shown in the following example.

ABC STEAMSHIP COMPANY, INC.—TRADE ROUTE—X—U.S.-FOREIGN COST DIFFERENTIAL FOR MAINTENANCE (UPKEEP) AND REPAIRS SUBSIDY RATE—1985

Principal competitors	(1) Distribution of repairs		(2) Country cost differential (percent)	(3) Proportionate cost differential (1) X (2) (percent)	(4) Competition weight factor (Percent)	(5) Weighted differential (3) X (4) (Percent)
	Country	(Percent)				
Japan	Japan	85	36.21	30.78		
	U.S.	15	0	0		
		100		30.78	23.4	7.20
Norway	Norway	15	44.72	6.71		
	Netherlands	20	43.23	8.65		
	Japan	45	36.21	16.29		
	U.S.	20	0	0		
		100		31.65	31.1	9.84
United Kingdom	U.K.	80	19.00	15.20		
	Hong Kong	15	50.35	7.55		
	U.S.	5	0	0		
		100		22.75	45.5	10.35
U.S.-Foreign Cost Differential						27.39

(c) *Calculation.* The appropriate U.S.-foreign cost differential shall be applied to the subsidizable and audited maintenance and repair costs for the three-year period, discussed in paragraph (c)(1) of this section, to establish a relationship of the cost differentials between M&R and wages. This relationship shall be used to establish the M&R subsidy on a current basis by applying the percentage relationship to the per diem wage subsidy rate.

(1) *Historical period.* The relationship of calendar period M&R subsidy to fiscal period wage subsidy shall be measured for the three-year period commencing five years prior to January 1 of the subsidized year. The M&R subsidy and the wage subsidy shall be expressed as an amount per voyage day for purposes of establishing the relationship. This ratio shall be established for each subsidized service and applied to the per diem wage rate of each ship type in the service to factor a daily amount of subsidy for M&R. The following is an example of the determination of the relationship and the daily amount of subsidy for M&R.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR M&R

T.R. 98 item	Calender Year 1980	Calender Year 1981	Calender Year 1982	Total
M&R C.Y. Expenses	$1,700,000	$2,000,000	$1,900,000	
Subsidy Rate	40.00%	44.00%	50.00%	
Subsidy	$680,000	$880,000	$950,000	$2,510,000
Voyage Days	1,100	1,225	1,175	3,500

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR M&R—Continued

T.R. 98 item	Calender Year 1980	Calender Year 1981	Calender Year 1982	Total
Average Subsidy Per Voyage Day ($2,510,000 ÷ 3,500 days) = $717.14				
	Fiscal Year 1980	Fiscal Year 1981	Fiscal Year 1982	Total
Wages F.Y. Per Diem Rate	$7,700	$8,050	$8,200	
Voyage Days	1,180	1,230	1,060	3,470
Subsidy	$9,086,000	$9,901,500	$8,692,000	$27,679,500
Average Subsidy Per Voyage Day ($27,679,500 ÷ 3,470 days) = $7,976.80				
Ratio M&R ODS to Wage ODS $717.14 ÷ $7,976.80 = 8.99%				

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio M&R to wage ODS (percent)	Daily M&R ODS 1/1/85
C4–A	$9,000	x 8.99	$809.10
C5–B	$9,300	x 8.99	$836.07
C6–C	$9,600	x 8.99	$863.04

(2) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited M&R expenses, segregated by service, for the historical period referred to in paragraph (c)(1) of this section. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

§ 282.23 Hull and machinery insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the tems and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for each service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the cost of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be substracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is detemined by dividing the dollar difference by the operators' total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

TABLE 2.—ABC STEAMSHIP COMPANY, INC.; CARGO VESSELS—TRADE ROUTE—X, U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE

[1985]

1. *COMPOSITE FOREIGN PREMIUM COST:*		
A. *Hull and Machinery,* Total coverage	$92,741,996	
Av-rage Premium Rate in British Market	1.00966%	
Premium Cost in British Market		$936,379
(Estimated Total Loss Payment $92,741,966@ .46500% [1]	$431,250)	
B. *Increased Value,* Total Coverage	$1,083,325	
Average Premium Rate in British Market	.32550%	
Premium Cost in British Market		$3,526
C. *Excess Liability,* Total Coverage		None
D. *Total Premium Cost If Insured 100% in British Market*		$939,905
E. *Deduct Particular Average Portion:*		
$936,378 Less $431,250=$505,129×62% [2]		313,180
F. *Net Premium Cost Exclusive of Particular Average*		$626,725

	Trade Route No. X Line A	Trade Route No. X Line B	Trade Route No. X Line C
Particular Average Adjustment:			
P/A Portion of Premium Cost	$313,180	$313,180	$313,180

TABLE 2.—ABC STEAMSHIP COMPANY, INC.; CARGO VESSELS—TRADE ROUTE—X, U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE—Continued

[1985]

M & R Subsidy Rate Complement [3]	84.48%	86.63%	87.34%
Adjusted P/A Foreign Premium Cost	$264,574	$271,308	$273,51
Add: Net Premium Cost (Excluding P/A)	$626,725	$626,725	$626,725
2. *Composite Foreign Premium Cost*	$891,299	$898,033	$900,29
3. *TOTAL PREMIUM COST TO SUBSIDIZED OPERATORS*	$1,068,998	$1,068,998	$1,068,99
4. DIFFERENTIAL IN DOLLARS [4]	177,699	170,965	$168,74
5. *COMPOSITE WEIGHTED DIFFERENTIAL* [5]	16.62%	15.99%	15.79%
6. *U.S.—FOREIGN COST DIFFERENTIAL*	16.62%	15.99%	15.79%

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.

[2] Percentage of particular average.

[3] 100% minus M&R subsidy rate of the same calendar year.

[4] Line 3 less line 2.

[5] Line 4 divided by line 3.

§ 282.24 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, "tovalop" or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumption made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for each subsidized service of the vessel. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting Requirement.* The operator shall submit the total premium cost for the subsidized year, plus any

supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Maritime Administrator's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE X, PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

Premium cost (per GRT)	United States	Greece	Pakistan	South Africa
Crew liability	[1] $3.98	[2] $1.27	[3] $0.45	[2] 0.08
All other liability	$1.06	$1.06	$1.06	$1.06
Total costs	$5.04	$2.33	$1.51	$1.14
Differential—Excess of U.S. cost over foreign cost	$2.71	$3.53	3.90	
Unweighted differential (percent)	53.77	70.04	77.38	
Competitior weight factor (percent)		24.3	24.9	50.8
Weighted differential (percent)		13.07	17.44	39.31
U.S.-foreign cost differential (percent)				69.82

[1] Determined by applying 79.03 percent (based on 5-year claims experience) to total GRT premium rate of $5.04.

[2] Crew liability data obtained by Maritime Administration.

[3] The unweighted percentage of Pakistani to U.S. wage costs of 11.23% was applied to $3.98 to estimate the foreign cost.

(d) *Daily Subsidy Rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, as determined in the calculation of wage subsi-

dy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued in the service for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year fiscal period. The resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall be used to determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

T.R. 98 item	Calendar year 1979	Calendar year 1980	Calendar year 1981	Total
P&I Deductible C.Y. Expenses	$1,680,000	$1,220,000	$1,400,000	
Diff. Foreign/U.S. Wage Cost	26.00%	23.00%	20.00%	
Subsidy	$436,800	$280,600	$280,000	$997,400
Voyage Days	1,140	1,100	1,225	3,465

Average Subsidy Per Voyage Day ($997,400 ÷ 3,465 days) = $287.85

	Fiscal year 1979	Fiscal year 1980	Fisal year 1981	Total
Wages F.Y. Per Diem Rate	$7,660	$7,700	$8,050	
Voyage Days	1,090	1,180	1,230	3,500
Subsidy	$8,349,400	$9,086,000	$9,901,500	$27,336,900

Average Subsidy Per Voyage Day ($27,336,900 ÷ 3,500 days) = $7,810.54

Ratio P&I Deductible ODS to Wage ODS $287.85 ÷ $7,810.54 = 3.69%

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio P&I ded. to wage ODS (percent)	Daily P&I ded ODS 1/1/85
C4-A	$9,000	×3.69	$332.10
C5-B	9,300	×3.69	343.17
C6-C	9,600	×3.69	354.24

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims, as identified in paragraph (d)(2) of this section, for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

Subpart D—Subsidy Payment and Billing Procedures

§ 282.30 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

§ 282.31 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

SCHEDULE A

(Company)
ODSA No. ____
ODS Accrued During Fiscal Year 198__
ODS Payable for the Month of ____

	Current voucher	Previous voucher	Total
Total Accrued ODS (Sched. B)	$	$	$
Less ODS Reductions:			
DTR/Deviations (Sched. C)	$		
Reduced Crew (Sched. D)	$		
Net ODS Accrued	$	$	$
Less Previous Payments			$
ODS Payable			$

SCHEDULE B

(Company)
ODS Accrued for the Month of ____
Trade Area ____

Vessel name	Voy. No.	Voyage dates		Voy. days [1]	Per diem rates [1]	Net subsidy
		From	To			
					$	$

Vessel name	Voy. No.	Voyage dates		Voy. days [1]	Per diem rates [1]	Net subsidy
		From	To			
ODS payable for unpredictably timed expenses not included in daily amount (attach supporting information).						$
Total accrued subsidy (enter on Schedule A)						$

---

[1] Place* next to applicable "Voy. days" or "Per diem rate" of vessel and voyage requiring reduction of ODS because of domestic trade operations or voyage deviations.

SCHEDULE C

(Company)

Domestic Trade and Voyage Deviation ODS Reductions

Domestic Trade Reduction (DTR):

Vessel name	Voy. no.	Gross voyage revenue	Domestic revenue	% of dom. to gross revenue	Per diem rate	Per diem reduction	DTR days	ODS reduction
		$	$	%	$	$		$

Deviation Reduction:

Vessel name	Voy. no.	Deviation days or % of day	Per diem rate	ODS reduction
			$	$

(Enter total Reductions on Schedule A).

SCHEDULE D

(Company)

Reduced Crew Period

Vessel	Reduced crew dates		No. of reduced crew days (a)	No. of crew reduced	Man-days	Man-day amount	Reduced crew reduction
	From	To					
			×	=	×	$=	$
			×	=	×	$=	$
			×	=	×	$=	$
			×	=	×	$=	$
Total Reduced Crew Reduction (Enter on Schedule A).							

(a) If licensed crew, indicate (a), (b) If unlicensed crew, include (b).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the

operation of the subsidized vessel and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

AFFIDAVIT

State of ______
City of ______
County/Parish of ______

I, ______, being duly sworn, depose and say, that I am (title) of the ______ (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ______, dated as of ______, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for liner vessels, PART 282, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated ______, covering voyage days allowed for subsidy during the periods commencing ______ and ending ______, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of ______, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereof, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

______

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ______ day of ______,

My commission expires ______
Notary Public ______

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

§ 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In the appeal to the Secretary, the operator shall indicate whether or not a hearing is desired.

(ii) MARAD will notify the appellant in writing if a hearing is to be held and whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered, the Board shall notify the appellant in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with

the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* MARAD shall follow the Rules of Practice and Procedure (46 CFR Part 201, Subpart M) for hearings granted under 46 U.S.C. 1176 and 46 CFR 282.32.

PART 283—DIVIDEND POLICY FOR OPERATORS RECEIVING OPERATING-DIFFERENTIAL SUBSIDY

Sec.
283.1 Purpose.
283.2 Definitions.
283.3 Dividend policy criteria.
283.4 Alternate standards.
283.5 Notification and reporting requirements.

AUTHORITY: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1026); Dept. of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 45 FR 37445, June 3, 1980, unless otherwise noted.

§ 283.1 Purpose.

(a) The rules of this part establish requirements for the declaration and payment of cash dividends by operators receiving operating-differential subsidy (ODS) under Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.) (Act). This part shall be applicable immediately unless otherwise provided for in the operators' operating-differential subsidy agreement (ODSA).

(b) One of the purposes of the Act is to foster the development and encourage the maintenance of the United States Merchant Marine. Subsidized operators are required to maintain the financial ability to assure adequate and timely reinvestment in the merchant marine. The policy contained herein takes into consideration the operators' contractual obligations to construct and acquire vessels, retire debt obligations secured by ship mortgages and maintain adequate working capital. However, this policy also takes into consideration the operators' need to attract new capital to the industry by paying dividends which are appropriate in light of the operators' earnings and long-range financial position.

§ 283.2 Definitions.

(a) *"Long-Term Debt"* means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long-Term Debt in accordance with generally accepted accounting principles, less the balance of escrow fund deposits attributable to the principal of obligations guaranteed pursuant to Title XI of the Act, where deposits are required in accordance with § 298.33. Capitalized Lease Obligations shall be included, but deferred income taxes shall not be included.

(b) *"Capitalized Lease Obligations"* means, as of any date, an amount (excluding amounts already included in Long-Term Debt) equal to the sum of: (1) The present value of all capital leases, as defined and computed in accordance with the Financial Accounting Standards Board Statement No. 13, Accounting for Leases (FASB-13), and (2) ½ of the minimum rentals (less operating components such as insurance, maintenance, property taxes, etc.) of all operating leases, as defined and includable in footnotes to the financial statements in accordance with FASB-13, for shipping property, i.e., vessels, containers, barges, terminals and other similar property.

(c) *"Equity"* (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but adjustable as follows. The net worth shall be reduced to the extent that the net worth computation includes any receivables from an affiliate of the company or any stockholder, director, officer, or employee (or any member of the employee's family) of the company, or of an affiliate of the company, other than (1) reasonable advances to affiliated agents required for the normal operation of the company's vessels, or (2) current receivables arising out of the ordinary course of business, and which are not outstanding for more than 120 days.

(d) *"Floor net worth"* means net worth computed as follows: The net worth requirement for existing operators shall be initially set at the greater of 90 percent of the operator's existing net worth or 50 percent of the operator's long-term debt contained in its audited financial statements for the year ended December 31, 1979. A new operator's net worth requirement shall initially be set at the greater of 90 percent of existing net worth or 50 percent of the original long-term debt issued with respect to the operator's vessel(s).

(e) *"Adjusted floor net worth"* means that the floor net worth requirement may be reduced with consent of the Maritime Administrator in an amount equivalent to amounts an operator could have paid in dividends under the previous policy set forth in this regulation prior to amendment in 1980, in the three years prior to the date of effectiveness of this policy, but chose not to pay out in dividends. The floor net worth requirement for both existing operators and new operators shall be further adjusted from time to time as follows:

(1) The net worth requirement shall be increased by an amount equal to 50 percent of the original long-term debt to be issued with respect to new vessel construction (with respect to existing operators, new vessel construction contracts executed after December 31, 1979), and (2) the net worth requirements shall be decreased by an amount equal to 50 percent of the original long-term debt issued with respect to vessels which are removed from service or otherwise transferred or sold.

(f) *"Working capital"* means the difference between current assets and current liabilities, both determined in accordance with generally accepted accounting principles, adjusted as follows:

(1) Current assets shall be reduced with respect to:

(i) Amounts in any Title XI Reserve Fund, pursuant to 46 CFR 298.35(e) or Capital Construction Fund (CCF) Security Amount prescribed by 46 CFR 298.35(f), that is being maintained pursuant to an agreement covering a vessel owned or leased by the company, or in another similar fund required under any other mortgage, indenture or other agreement to which the company is a party;

(ii) Any securities, obligations or evidences of indebtedness of an affiliate of the company or of any stockholder, director, officer or employee (or any member of the family of an employee of the company or of such affiliate), except: (*a*) Reasonable advances to affiliated agents required for the normal current operation of the company's vessels, or (*b*) receivables outstanding for not more than 120 days, arising out of the ordinary course of business.

(2) Current assets shall be increased with respect to CCF accruals (but not actual deposits), if the operator has first met its prorated CCF minimum deposit schedule.

(3) Current liabilities shall be increased by one-half of the annual payment of all charter hire and other lease obligations having a term of more than twelve months, other than charter hire and other lease obligations already included and reported as a current liability on the company's balance sheet.

(4) Current liabilities shall be decreased by amounts on deposit in a CCF which are available for the payment of current liabilities.

(g) *"Prior years' earnings"* means the aggregate net income after tax for the three years immediately preceding the year in which the dividend is declared. An operator may include in prior years' earnings estimated net operating income after tax for the current fiscal year if such amount is based upon actual net operating income after tax for the first nine months of the current year. If an operator includes estimated current income in its prior years' earnings computation, it may also include earnings for only the immediately preceding two years, rather than three years, in the computation of prior years' earnings.

(h) *"Funds available"* shall mean the sum of:

(1) Amounts on deposit in any fund established pursuant to the Act plus accrued deposits, unless already included in working capital, (including interest thereon), less accrued withdrawals from any such fund;

(2) Gross book value, as shown on the operators' books of account, of subsidized vessels and related barges and containers, less accumulated depreciation;

(3) Progress payments made on subsidized vessels and related barges and containers undergoing construction, reconstruction, or reconditioning;

(4) Progress payments made on additional vessels and related barges and containers, if any, which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Maritime Subsidy Board (Board);

(5) Balance of trade-in allowances pursuant to section 510 of the Act;

(6) Capitalized Lease Obligations as defined in § 283.2(b); and

(7) Working capital as defined in § 283.2(f).

(i) *"Funds required"* means the sum of:

(1) 25 percent of the total cost to the operator of: (i) Subsidized vessels under construction, reconstruction or reconditioning, (ii) additional vessels under construction, reconstruction or reconditioning pursuant to any contract entered into between the operator and the Maritime Administrator or the Board, and (iii) barges and containers under construction or under contract to purchase, and to be used as part of the complement of such vessels;

(2) 25 percent of the total cost to the operator, estimated at the time a cash dividend is to be declared, of: (i) Replacement of subsidized vessels required to be replaced under the current ODSA (which cost must be indicated whether or not the operator anticipates leasing replacement vessels), (ii) additional vessels which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Board, and (iii) barges and containers required as part of the complement of such vessels. In making this computation, the operator shall obtain the prior written agreement of the Maritime Subsidy Board as to number of replacement vessels, type and commercial characteristics, projected award date of construction contract, projected delivery dates, estimated total cost (current) and method used to determine such cost, intended area of operation, and identity of vessels to be replaced.

(3) Capitalized Lease Obligations as defined in § 283.2(b), excluding that portion of any such amount payable within one year; and

(4) Outstanding indebtedness on, or secured by, subsidized vessels and related barges and containers, or incurred in connection with the acquisition, construction or reconstruction of such vessels and related barges and containers.

§ 283.3 Dividend policy criteria.

(a) *In general.* A subsidized operator may pay cash dividends at any time it desires up to the amount set forth in paragraph (b) of this section. Dividends may be paid pursuant to paragraph (c) of this section, as provided therein. The written approval of the Maritime Administrator shall be obtained prior to any declaration of dividends by the operator, if the payment of dividends does not meet the criteria of either paragraph (b) or (c) of this section. It is intended that dividend payments be permitted under the provisions of either paragraph (b) or (c), whichever allows payment of the greatest amount of dividends. Nothing in this part shall alter restrictions on the payment of dividends which may affect the operator under any other agreements with the Maritime Administrator.

(b) *40 percent dividend criteria*—If the operator is able to meet the criteria of this paragraph after declaration and payment of the proposed dividend, it may declare a dividend of up to 40 percent of prior years' earnings less any dividends that were paid in such years, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years. If in any of the years included in the prior years' earnings calculation dividends were paid under the 100 percent rule, those years' earnings and dividends may be excluded from the prior years' earnings calculation, and then only the earnings and dividends associated with the remaining years of the three year period may be used. This provision enables an operator to pay dividends under the 40 percent rule when in past years it has paid dividends under the 100 percent rule. The criteria which must be satisfied are as follows:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-term Debt to Equity ratio*—Long-Term Debt must not exceed two times Equity. (The Maritime Administrator may modify this requirement during periods of vessel construction).

(3) *Net Worth Floor*—Net Worth must exceed the adjusted net worth floor as computed in § 283.2.

(c) An operator may declare a dividend in an amount up to 100 percent of retained earnings, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years, if the following criteria are satisfied:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-Term Debt to Equity ratio*—Long-Term debt must not exceed Equity.

(3) *Net Worth Floor*—Net worth must exceed the Adjusted Net Worth floor as computed in § 283.2.

(4) *Funding for Replacement Vessels*—Funds available must exceed Funds Required, and the basis for Funds Required for replacement vessels must receive prior approval, as provided in § 283.2(i) herein.

§ 283.4 Alternate standards.

(a) The Maritime Administrator may waive or modify any of the financial terms or requirements otherwise applicable in Part 283, upon determining that other factors exist which make alternate terms or requirements appropriate. An example of such a situation would involve an operator that: (1) Has no replacement obligation and (2) has a guarantee of charter hire or other guarantees sufficient to cover capital costs. In such cases, the Government's interest may be sufficiently protected although the operator cannot meet the standard Part 283 requirements. Another example may be to include receivables otherwise excluded if they are properly guaranteed by an acceptable guarantor.

§ 283.5 Notification and reporting requirements.

(a) *Notice*—The operator shall give written notice of a dividend declaration to the Maritime Administrator immediately upon such declaration.

(b) *Reports*—The operator shall submit a report as described below whenever it declares a dividend or applies for approval under § 283.3 to declare a dividend as of the approximate date of such declaration or request. Such statements shall include information no less current than 30 days. If no dividends are declared during the calendar year, the operator is not required to submit a statement.

If the Maritime Administration determines that the operator was, for any reason, not qualified to pay the dividend, then the operator shall, in writing, request the approval of the Maritime Administrator for any subsequent dividend declaration. If such approval is then granted, the operator may follow the requirements of this Part 283 once again. The reports required by this section shall be prepared in accordance with the definitions set forth in § 283.2. A separate statement shall be submitted showing the adjustments made to working capital, long-term debt and net worth, and shall conform to the definitions of such items as contained herein. As appropriate, reports shall include the following:

(1) The ratio of debt to equity, floor net worth and prior years' earnings in the format set forth in Schedule A;

(2) The excess of "funds available" over "funds required" in the format as set forth in Schedule B;

(3) Working capital as set forth in Schedule C; and

(4) Other applicable limitations prescribed in any agreements between the operator and the Maritime Administrator affecting the payment of dividends.

(c) *Officials to whom notices and reports are to be directed.* Operators shall submit, in triplicate, all notices, reports and requests prescribed in this part to the Secretary, Maritime Administration, Washington, DC 20590, with a copy of such notice or request to the appropriate Maritime Administration Region Director.

SCHEDULE A—RATIO OF DEBT TO EQUITY, FLOOR NET WORTH, AND PRIOR YEARS' EARNINGS

Company ———

———, 19—

Long-term debt.. $.........
Retained earnings.................................... $.........
Equity... $.........
Ratio of Long-Term Debt to Equity.................. ....
Adjusted Floor Net Worth as computed in accordance with § 283.2. $.........
Prior years' earnings as defined in § 283.2.................. $.........

____
(Signature of Chief Financial Officer or other authorized officer)

SCHEDULE B—FUNDS AVAILABLE AND FUNDS REQUIRED

Company ———

———, 19—

I. FUNDS AVAILABLE

A. On deposit in statutory funds:
Capital construction fund.......................... $.........
Construction reserve fund..............................
Construction and escrow funds.......................
Plus accrued deposits to funds (or less accrued withdrawals from funds)........................ $.......
B. Gross book value of vessels and related barges and containers employed in subsidized services:
Subsidized vessels..
Related barges...
Related containers...
Less accumulated depreciation ....(.........) ....
C. Progress payments made on subsidized vessels and related barges and containers undergoing construction, reconstruction or reconditioning.......... ....
D. Progress payments made on additional vessels and related barges and containers agreed to be constructed or acquired.. ....
E. Balance of trade-in allowances (section 510 of the Act).. ....
F. Capitalized Lease Obligations as defined in § 283.2(b).. ....
G. Net Working Capital (from Schedule D)..................... ....
TOTAL FUNDS AVAILABLE............................ $.........

II. FUNDS REQUIRED

A. Cost of current commitments:
1. ODSA vessels under construction or reconstruction:

Number of vessels	Total cost	Less Government contributions	Cost to operator
....	$..................	($..............)	$..............

25% of cost to operator ...... $..............

2. Additional vessels under construction, reconstruction or reconditioning pursuant to a contract with the Assistant Secretary or the Board:

Number of vessels	Total cost	Less Government contributions	Cost to operator
....	$..................	($..............)	$..............

25% of cost to operator ...... $..............

3. Barges and containers under construction or contract t purchase:

Number of:	Cost to operator	
Barges................................	$	
Containers...........................	$	$..............

25% of Cost to Operator......... $..............

B. Estimated cost of additional vessels (whether to be owne or leased):
1. Subsidized vessels to be replaced under ODSA:

Number of vessels	Total cost	Less Government contributions	Cost to operator
....	$..................	($..............)	$..............

25% of cost to operator ...... $..............

2. Additional vessels agreed to be constructed or acquir

Number of vessels	Total cost	Less Government contributions	Cost to operator
....	$..................	($..............)	$..............

25% of cost to operator ...... $..............

3. Additional barges and containers required as the complement of vessels agreed to be constructed or acquired in items B1 and B2 above:

Number of:	Cost to operator	
Barges................................	$	
Containers...........................	$	$..............

25% of Cost to Operator......... $..............

C. Outstanding indebtedness on, or secured by, subsidized vessels and related barges and containers, or incurred in connection with the acquisition, construction, or reconstruction of such vessels and related barges and containers. $..............
D. The present value of Capitalized Lease Obligations as defined in § 283.2(b), excluding that portion of any such amount payable within one year. $..............
TOTAL FUNDS REQUIRED .... $..............

III. EXCESS FUNDS (DEFICIENCY OF FUNDS). $..............

____

(Signature of Chief Financial Officer or other authorized officer)

SCHEDULE C—DETERMINATION OF WORKING CAPITAL (AS DEFINED IN 46 CFR 283.2)

Company ————

————, 19——

A. CURRENT ASSETS:		
Cash and marketable securities	$........	
Accounts receivable (current)	....	
Other current assets (specify)	....	
Total	$........	
Accrued deposits to CCF, (provided operator has met prorated deposit schedule).	$........	
Other adjustments (specify)	....	$........
B. CURRENT LIABILITIES:		
Current liabilities	$........	
Add one-half annual charter hire (if not included above).	....	
Less current liabilities for which payment is available from CCF deposits.	....	
Other adjustments (specify)	....	$........
C. WORKING CAPITAL:		
Current assets less current liabilities		$........

____

(Signature of Chief Financial Officer or other authorized officer)

PART 285—DETERMINATION OF PROFIT IN CONTRACTS AND SUBCONTRACTS FOR CONSTRUCTION, RECONDITIONING, OR RECONSTRUCTION OF SHIPS

GENERAL

Sec.
285.1 Application of regulations.
285.2 Intent.
285.3 Disposition of questions.
285.4 Acceptance of statement and certificates.
285.5 Audits.
285.6 Final accounting.
285.7 Grievances.
285.8 Hearings.

DEFINITIONS

285.11 Definitions.

SUBCONTRACTS

285.21 Contract requirement.
285.22 Failure to effect contract requirements.
285.23 Series of subcontracts.
285.24 Same article or articles.
285.25 Designated scientific equipment.
285.26 A. B. S. inspection, intangibles, and professional fees.
285.27 Availability to Administration.

BOOKS AND RECORDS

285.31 Manner of keeping books.
285.32 Submission of accounting data to Administration.
285.33 Basis for reporting profits.
285.34 Improper and inadequate accounting.
285.35 Failure to maintain adequate cost records.

COMPLETION DATES

285.41 Contract completion date.
285.42 Subcontract completion date.

DETERMINATION OF PROFIT

285.51 Profit or loss defined.
285.52 Cost of performing a contract or subcontract.
285.53 Alphabetical list of representative items of cost.

FILING OF REPORTS

285.61 Contractors.
285.62 Subcontractors.
285.63 Transmittal.
285.64 Revision of report forms.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 505, 49 Stat. 1998, as amended; 46 U.S.C. 1155.

SOURCE: General Order 30 (Rev.), 17 FR 7594, Aug. 20, 1952, unless otherwise noted.

GENERAL

§ 285.1 Application of regulations.

Unless otherwise provided by the contract, profit under the contract and related subcontracts will be determined by the Administration in accordance with the regulations in this part.

§ 285.2 Intent.

It is the intent that the regulations in this part shall be fairly and equitably applied in each case, and that the determination of financial outcome under a contract or subcontract shall be consistent with applicable laws, the prime contract, the regulations in this part, and, to the extent not controlled by the foregoing, generally accepted accounting practice.

§ 285.3 Disposition of questions.

(a) Questions arising with respect to statutory authority pursuant to which a contract and subcontracts thereunder are awarded, the grouping of contracts, subcontracts, or both for the purpose of determining financial outcome thereunder for a particular income taxable year, subcontracts not subject to profit-limiting provisions, allowability of costs and accounting methods, or any other matters relating to a determination of profit or loss, should be referred to the Administration for disposition.

(b) In the event provisions of a contract are in conflict with any provisions of the regulations in this part, the provisions of the contract shall prevail.

§ 285.4 Acceptance of statement and certificates.

Acceptance by the Administration or its agent or representative of any statement or certificate shall not constitute a waiver by the Administration of its right to examine the books, files, and records of the contractor or subcontractor, if it shall deem such examination to be necessary or appropriate to a proper finding with respect to the contractor's or subcontractor's profit.

§ 285.5 Audits.

(a) The Administration will scrutinize construction costs and overhead expenses to determine that they are fair, just, and not in excess of a reasonable market price for commodities or goods or services purchased or charged.

(b) In the case of contracts with a shipbuilder (i.e., contracts for the construction, reconditioning or reconstruction of a ship or ships) the Administration will ordinarily designate an auditor or auditors to be stationed at the shipyard of the contractor during performance of the contract.

(c) In the case of contracts or subcontracts for materials or commodities of a general commercial character not especially designed or manufactured for the particular purpose of becoming a part of the ship or for materials or commodities with respect to which there is an established or readily ascertainable open market price, the Administration may in its discretion accept, subject to the right of audit, the notarized statement of a responsible officer or independent public accountants in the form prescribed by the Administration setting forth the total contract or subcontract price, the total cost of performance thereof, the total amount of overhead charged to such cost, the net profit and the percentage such net profit bears to the contract or subcontract price, and certifying that the profit so reported is the true profit as reflected by the books of the contractor or subcontractor and was determined in accordance with generally accepted accounting practice and with the principles of profit determination prescribed in this part.

(d) In the case of other contracts and subcontracts (those involving items especially manufactured for the particular purpose of becoming a part of a ship) the Administration will ordinarily either station an auditor or auditors at the contractor's or subcontractor's plant or, in its discretion, provide for periodic visits by its auditors.

(e) All accounts, books, documents, memoranda, minutes, and records of every kind of the contractor or subcontractor involving the cost of performing a contract or subcontract are subject to inspection and audit by the Administration. The authority of the Administration's auditors in this connection shall be respected.[1]

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended at 33 FR 2944, Feb. 14, 1968]

§ 285.6 Final accounting.

Upon final accounting with respect to profit under any contract or subcontract, the Administration will examine the notarized report of profit of the contractor or subcontractor, together with reports of audit and any other related data. If the Administration's determination of profit shall differ from that reported by the contractor or subcontractor, the Administration will furnish notice of the Administration's proposed findings and the contractor or subcontractor shall be heard with respect thereto, provided it so requests within sixty days after such notice.

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[1] The accounts, books, documents, memoranda, minutes and records referred to herein shall be retained two years after the final determination by the Maritime Administration.

§ 285.7 Grievances.

Any contractor or subcontractor being aggrieved with respect to any matters in connection with the audit of its accounts or the determination of profit under its contract or subcontract shall be entitled to a hearing under such procedure as the Administration shall deem appropriate.

§ 285.8 Hearings.

Hearings under the regulations in this part shall be before the Administrator, or such person or persons as the Administrator may designate.

DEFINITIONS

§ 285.11 Definitions.

The following meanings shall be given to the words and terms employed in this part:

(a) *Act.* "Act" means the Merchant Marine Act, 1936 (49 Stat. 1985), as amended.

(b) *Administration.* "Administration" means the Maritime Administration, Department of Transportation, or its duly authorized representative or representatives.

(c) *Board.* "Board" means the Maritime Subsidy Board or its duly authorized representative or representatives.

(d) *Contract.* "Contract" means any agreement of the Board or Administration the terms of which make the regulations in this part applicable.

(e) *Contractor.* "Contractor" means any party entering into a contract with the Board or Administration.

(f) *Subcontract.* "Subcontract" means an agreement (purchase order, requisition, or other form of agreement) between a contractor or a subcontractor and any third party covering construction, reconditioning, or reconstruction of a vessel or portion thereof or for the manufacture or furnishing of any materials, supplies, goods or other personal property or the rendering of any services directly for such construction, reconditioning or reconstruction.

(g) *Subcontractor.* "Subcontractor" means any party entering into a subcontract with a contractor or another subcontractor.

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended by Amdt. 1, 19 FR 5399, Aug. 25, 1954; 19 FR 5868, Sept. 10, 1954; 33 FR 2944, Feb. 14, 1968]

SUBCONTRACTS

§ 285.21 Contract requirement.

A contractor or subcontractor shall obligate subcontractors to the Administration or Board as required by the contract, particularly with respect to the profit-limiting provisions therein.

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended by Amdt. 1, 19 FR 5399, Aug. 25, 1954]

§ 285.22 Failure to effect contract requirements.

In the event a contractor or subcontractor fails to secure the agreement of a subcontractor of such contractor or subcontractor to the recapture of profits provisions or the agreement referred to in § 285.23, such contractor or subcontractor shall pay to the Administration as damages for such failure, a sum equal to the excess profits, as determined by the Administration, under the subcontract, from which the referred to recapture provisions were omitted or a sum equal to the excess profit, as determined by the Administration, of the subcontracts which are deemed to be a single subcontract under the provisions referred to in § 285.23; *Provided,* That if the Administration is, by reason of such failure to include the recapture provisions or the provisions referred to in § 285.23, unable to audit the subcontractor's books to determine the excess profit under such subcontract or subcontracts the damages to be paid the Administration, as provided above, shall be a sum equal to fifteen percent (15%) of the adjusted price of such subcontract or subcontracts.

[19 FR 5399, Aug. 25, 1954]

§ 285.23 Series of subcontracts.

All subcontracts of a subcontractor for the same article or articles for the performance of the contract, shall be deemed to be a single subcontract subject to the recapture of profits provisions of the contract; every subcontract shall include the agreement of the subcontractor that all such subcontracts shall be deemed to be a single subcontract.

[19 FR 5399, Aug. 25, 1954]

§ 285.24 Same article or articles.

The term "same article or articles" as used in this part, shall include articles of like general description when supplied by a single subcontractor, as for example, steel, whether plates, shapes, or forms, fans without regard to construction or capacity, valves without regard to type or size, furniture without regard to kind of furniture.

[19 FR 5399, Aug. 25, 1954]

§ 285.25 Designated scientific equipment.

Subcontracts for equipment designated by the Administration or Board as scientific equipment used for communication and navigation are not subject to profit-limiting provisions. A designation of equipment furnished under a particular contract or subcontract shall not be construed as designation under any other contract or subcontract unless, with respect to designations still in effect, the Administration or Board shall concur in a claim that equipment being furnished under the subsequent contract or subcontract is of the nature, kind and utility entitling said equipment to exemption under a designation previously made by the Administration or Board.

§ 285.26 A.B.S. inspection, intangibles, and professional fees.

Subcontracts for American Bureau of Shipping inspection, or for such intangibles as insurance, surety and the like, or subcontracts for expert or professional services (including the furnishing of technical information or data) are not subject to profit-limiting provisions.

§ 285.27 Availability to Administration.

Contractors and subcontractors shall make available to the Administration all subcontracts, purchase orders, or other agreements, and shall furnish copies of such instruments when requested.

[G.O. 30 Rev., 17 FR 7594, Aug. 20, 1952, as amended by Amdt. 1, 19 FR 5399, Aug. 25, 1954]

BOOKS AND RECORDS

§ 285.31 Manner of keeping books.

Contractors and subcontractors subject to the provisions of this part should keep their books in a consistent manner conforming to generally accepted accounting practice. In cases where a diversified line of operations, commodities, products or services is carried on or dealt in, the books should clearly distinguish between such several lines.

§ 285.32 Submission of accounting data to Administration.

(a) A contractor upon entering into a contract should submit promptly to the Administration a full statement of current accounting principles and methods unless previously submitted, together with a copy of related forms, manual of accounting procedure, and classification of accounts and any revisions thereof. Approval of a contractor's accounting methods shall not preclude the Administration's action with respect to any steps which may later be found necessary for the proper determination of profit consistent with the principles prescribed in this part.

(b) During the progress of a contract for ship construction, the contractor shall submit copies of such monthly financial and cost statements as are normally prepared for its own use. Ordinarily these will include a Trial Balance, Balance Sheet (including exhibits supporting major items), Profit and Loss Statement, Cost Statement of the vessels by hulls and contracts, and Overhead Statements detailed according to the contractor's classification of accounts. A breakdown should be made of accounts such as taxes, insurance, and the like, which include seeral types of items under one general designation. In instances where the Administration has assigned a Resident Auditor, statements should be routed to him; otherwise, they should be mailed to Maritime Administration, Department of Transportation, Washington, DC 20590.

(c) Other contractors and all subcontractors shall submit financial statements and supporting data upon request of the Administration.

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended at 33 FR 2944, Feb. 14, 1968]

§ 285.33 Basis for reporting profits.

A contractor or subcontractor having in effect a system of determining costs conforming to generally accepted accounting practice, fully responsive to the particular conditions prevailing at its shipyard or plant and in its business, consistently followed, and yielding adequate accounting information for the purposes of this part may base its report of profit thereon subject to such adjustments as are necessary to conform to the regulations in this part.

§ 285.34 Improper and inadequate accounting.

Should it be found that improper or inadequate accounting methods have been or are being followed, the Administration may require the contractor or subcontractor to restate its accounts or otherwise satisfactorily account for the profit under its contract or subcontract so as to accord with generally accepted accounting practice and the regulations in this part.

§ 285.35 Failure to maintain adequate cost records.

If a contractor or subcontractor shall be found not to have kept its books and records in such manner that a proper determination of profit in accordance with generally accepted accounting practice and the regulations in this part can be made therefrom or shall have failed to retain any books or records essential to compliance with the provisions of the act or of the regulations in this part, the Administration will allow as cost of performance only such charges as are shown by the contractor or subcontractor on evidence satisfactory to the Administration to have been properly incurred in the performance of such contract or subcontract, and the profit shall be deemed to be the difference between the contract price as defined in the applicable contract or subcontract and the total of such charges.[1]

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended at 21 FR 8108, Oct. 23, 1956]

COMPLETION DATES

§ 285.41 Contract completion date.

The date of completion of a contract for the construction, reconditioning or reconstruction of a vessel or vessels for the purpose of fixing the taxable year for accounting for profit or loss shall be the date of delivery and acceptance of the last vessel thereunder. The date of completion of other contracts for the purpose of fixing the taxable year for accounting for profit or loss shall be the date of delivery of the last material or performance of the last service required under any provision of the contract except the guarantee clause.

§ 285.42 Subcontract completion date.

The date of completion of a subcontract for the purpose of fixing the taxable year for accounting for profit or loss shall be the date of delivery of the last material or performance of the last service required under any provision of the subcontract except the guarantee clause.

DETERMINATION OF PROFIT

§ 285.51 Profit or loss defined.

(a) Profit under a particular contract or subcontract is the excess of the adjusted contract price over the total allowed cost of performance.

(b) Loss under a particular contract or subcontract is the excess of the total allowed cost of performance over the adjusted contract price.

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[1] The books and records referred to in this section shall be kept for a period of two years after the contractor or subcontractor has made payment of excess profits as determined by the Maritime Administration.

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§ 285.52 Cost of performing a contract or subcontract.

(a) Cost of performing a contract or subcontract shall consist, for the purpose of this part (see §§ 285.61 and 285.62 for required forms) of four general classifications as follows: Direct material, direct labor, other direct charges and overhead.

(1) *Direct material.* (i) Direct material shall include the cost of all items purchased, supplied, manufactured or fabricated, which enter directly into the end product or which are used or consumed directly in connection with the manufacturing, fabricating, processing, furnishing or converting of such product. It is suggested that all material intended for vessel construction should if at all possible be charged directly to the vessel construction contracts involved.

(ii) The prices at which materials are charged shall be fair, just, and not in excess of a reasonable market price. Prices paid to any supplier associated or affiliated with the contractor or subcontractor will be scrutinized in this connection. All materials, including fittings, parts, auxiliaries, etc., must be taken into account at prices not in excess of the net cost thereof (as to requirement with respect to accounting for discounts, see § 285.53 (m)), but materials purchased for and drawn from general stores may be priced by any recognized method of pricing stores withdrawals conforming to generally accepted accounting practice and consistently followed. The net effect of any adjustments related to inventory accounts shall be taken into account to the extent that the propriety of such adjustments is established to the satisfaction of the Administration. In determining any question as to the propriety of prices at which materials purchased specifically for the performance of a contract or subcontract are charged as related to a reasonable market price, the market prices prevailing at the time of commitment for purchase shall govern. In any cases where the contractor's or subcontractor's accounts do not cause transportation charges to follow cost of materials, the method of allocating such charges, whether through overhead or otherwise, must be equitable and consistently followed.

(2) *Direct labor.* (i) Direct labor generally covers the wages and other compensation of employees whose time can be definitely and accurately measured as a direct charge to contracts or subcontracts.

(ii) It is preferable that direct labor be taken into account upon the basis of the individual rates actually paid. Where a contractor or subcontractor follows consistently a method of accounting for direct labor on a productive hour basis at average rates or employs other approximations to reduce clerical work, such method may be allowed provided it shall be shown to the satisfaction of the Administration that substantial accuracy is attained thereby. Compensation paid to leading men, quartermen and foremen whose time can be accurately allocated to specific work may, and preferably should be accounted for as direct labor, but an arbitrary allocation of supervisory pay roll or of any part thereof to "direct labor" will be allowed only if and to the extent that it is shown to the satisfaction of the Administration to be conducive to an accurate determination of cost. Overtime, production bonuses, premiums and other labor incentive payments to employees whose time is accounted for as direct labor are preferably to be included as direct labor but if charged in whole or in part to overhead the method of taking such charges into account must be such that no part of such charges incurred by reason of other work is inequitably borne by the contracts or subcontracts.

(3) *Direct charges—other.* (i) Direct charges—other usually include costs of builder's risk insurance, performance and payment bonds, royalties, outside professional services, inspection, drafting and engineering, mold loft patterns, wood staging and shoring, repair and maintenance of metal staging, launching, docking, trials, cleaning, general material handling, temporary lights, freight on direct material, and spoilage and other similar items.

(ii) Costs of builder's risk insurance, performance and payment bonds, royalties, outside professional services, inspection, etc., which are incurred or account of a contract or subcontract may be charged directly thereto: *Provided*, That such method is consistently followed and that no similar charges on account of other work are made through overhead in such manner as to prorate any part thereof inequitably to a contract or subcontract.

(4) *Overhead*. (i) Overhead comprises all indirect construction costs, including administrative and general expenditures, indirect labor and material, depreciation, etc., which are not directly chargeable to contracts or subcontracts.

(ii) The following provisions apply to the distribution of overhead in determining profit under this part:

(*a*) All charges which are not directly allocable to particular contracts or subcontracts, and constituting what is broadly regarded and herein referred to as "overhead", shall be distributed over all operations in such manner as will approximate as closely as practicable an accurate determination of cost. To that end the method of distributing overhead must conform to generally accepted accounting practice, and where more than one class of work is being performed must be such that no class of work is caused to bear appreciably any part of the indirect expense which should properly be borne by some other class of work.

(*b*) The distribution of the various classes of overhead equally over all or substantially all varieties of production work will not ordinarily be accepted as in accordance with generally accepted accounting practice unless it shall be shown to the satisfaction of the Administration that such method results, under prevailing conditions, in a substantially accurate determination of cost.

(*c*) The practice of determining separate departmental rates for overhead distribution applicable to the corresponding direct labor charges is acceptable.

(*d*) Distribution of various classes of factory overhead otherwise than upon the basis of direct labor may be accepted if it be shown to the satisfaction of the Administration that a substantially equitable distribution is effected.

(*e*) The use of machine-hour rates or of standard or specification manufacturing costs properly determined is acceptable.

(*f*) A differential distribution of overhead to various classes of work, as for example, the use of a variety of fixed percentages suitably determined by periodic cost-engineering survey or by other acceptable means, so that each class of work bears its appropriate overhead rate may be accepted if it be shown to the satisfaction of the Administration that a substantially equitable distribution is thereby effected.

(*g*) In cases where, by the use of predetermined rates (departmental, machine-hour, differential, etc.) or otherwise, the actual total of all indirect charges incurred in or allocable to a particular month or other relatively brief accounting period is not exactly absorbed, the under- or over-absorption must be completely distributed currently either ratably or by such other means as will effect an accurate and equitable allocation. The equalizing of seasonal expenses, such as heating, is permissible if a consistent policy is maintained in such connection.

(*h*) In passing upon the general acceptability of the contractors' or subcontractors' principles and methods of accounting, the Administration will inquire particularly into the method of overhead distribution and no change should be made therein during progress of work without prior notice to the Administration.

(b) *Representative items of cost*. Representative items of cost are summarized in this paragraph under three general categories consisting of those ordinarily allowable, those subject to qualification or disallowance, and those unallowable in the determination of recapturable profit. Further clarification is contained in the explanatory text in the paragraphs under § 285.53.

(1) *Items ordinarily*

	See sections—
Bidding Expenses	285.53 (d)
Bonds	285.53 (e)
Bonuses	285.53 (f)
Castings	285.53 (h)
Direct Charges—Other	285.52 (a) (3)

	See sections—
Direct Labor	285.52 (a) (2)
Direct Material	285.52 (a) (1)
Directors' Fees	285.53 (l)
Dredging	285.53 (o)
Drydocks	285.53 (p)
Excess Material (Credits)	285.53 (s)
Guarantee Period Expenses	285.53 (z)
Inspection Services	285.53(bb)
Insurance	285.53(cc)
Material Operations—Departmental	285.53(jj)
Overhead	285.52 (a) (4)
Pension and Retirement Payments	285.53 (ll)
Scrap (Credits)	285.53 (pp)
Towing	285.53 (ss)
Travel Expenses	285.53 (tt)
Welfare Expense—Employee	285.53 (ww)

(2) *Items subject to qualification or disallowance.*

Advertising Expenses	285.53 (a)
Central Office Expenses	285.53 (i)
Depreciation of Plant Facilities	285.53 (k)
Discounts	285.53 (m)
Donations	285.53 (n)
Dues and Memberships	285.53 (q)
Fees, Legal, Accounting, and Other Professional.	285.53 (v)
Fees of Transfer Agents and Registrars	285.53 (w)
Fuel, Lube Oil, and Fresh Water on Board Vessel on Date of Delivery.	285.53 (y)
Interest	285.53 (dd)
Intracompany and Intercompany Charges.	285.53 (ee)
Launching Expense—Ceremonial	285.53 (ff)
Maintenance and Repair Costs	285.53 (ii)
Reserves	285.53 (mm)
Royalties	285.53 (nn)
Salaries	285.53 (oo)
Selling Expenses	285.53 (qq)
Taxes	285.53 (rr)
Unclaimed Wages	285.53 (uu)

(3) *Unallowable items.*

Amortization of Asset Appreciation	285.53 (b)
Bad Debts	285.53 (c)
Capital Gains and Losses	285.53 (g)
Damages	285.53 (j)
Entertainment Expenses	285.53 (r)
Excess Profits	285.53 (t)
Expense and Income—Nonoperating	285.53 (u)
Fines and Penalties	285.53 (x)
Income from Investments	285.53 (aa)
Liquidated Damages	285.53 (gg)
Losses or Profits Under Other Contracts and Subcontracts.	285.53 (hh)
Organization and Reorganization Expenses.	285.53 (kk)
Unreasonable Charges	285.53 (vv)

§ 285.53 Alphabetical list of representative items of cost.

In connection with specific items, there are offered the following descriptive and explanatory comments:

(a) *Advertising expenses.* The Administration's general policy in regard to advertising for the purpose of effecting sales, as distinguished from institutional advertising in trade or technical journals, is described as follows:

(1) As a general rule a contractor's cost of advertising is not allowable on the reasoning that advertising is not required in order to do business with the Government. However, certain kinds of advertising of an industrial or institutional character, placed in trade or technical journals, not primarily with the object of selling particular products but essentially for the purpose of offering financial support to such trade or technical journals, because they are of value for the dissemination of trade and technical information for the industry, are not really an advertising expense to effect sales so much as an operating expense incurred as a matter of policy for the benefit of the business and the industry. Thus the reasonable cost of such advertising placed in trade publications as relates to the particular business may be allowed.

(2) The reasonable cost of advertising consistent with the normal and usual practice of a subcontractor may be allowed in determining the cost of performing a subcontract.

(3) The cost of advertising to obtain employees ordinarily is allowable as a part of personnel expense distributable to contracts and subcontracts unless determined to be excessive.

(4) Reasonable expenses of nonelaborate publications issued for the purpose of morale, production, protection, or welfare of a contractor's or subcontractor's employees, which are in the scope of a plant publication are allowable costs.

(b) *Amortization of asset appreciation.* Amortization of asset depreciation shall not be taken into account in determining the cost of performing contracts or subcontracts.

(c) ***Bad debts.*** (1) Bad debts may be defined as uncollectible or worthless notes or accounts receivable arising from sales of products or other transactions entered into for the purpose of profit. Such items or expenses related thereto are not allowable in contract or subcontract performance costs.

(2) Advances in reasonable amounts made to employees in connection with allowances for traveling expenses which have not been recovered are not regarded as bad debts, but as ordinary business losses allowable in cost directly, if practicable, or through distributable overhead.

(d) *Bidding expenses.* Reasonable preliminary expenses incident to preparation of bids inclusive of other necessary costs such as legal, accounting and other professional fees and traveling expenses, are allowable costs through distributable overhead; such expenditures as a direct charge to a contract or subcontract will be allowed only when approved by the Administration.

(e) *Bonds.* Premiums for performance and payment bonds required by a contract or subcontract are allowable.

(f) *Bonuses.* Payments to employees in pursuance of a regularly established and properly administered incentive bonus system may, subject to the limitations in paragraphs (oo) and (vv) of this section, be allowed in costs provided the aggregate compensation paid to each individual is reasonable and appropriate to services actually rendered in the regular course of business.

(g) *Capital gains and losses.* Capital gains and losses except as provided under the heading "Depreciation of Plant Facilities" in § 285.53(k) of this part shall not be taken into account in determining recapturable profit.

(h) *Castings.* Castings made in the contractor's or subcontractor's own foundry may be charged upon fixed price per pound or other arbitrary basis provided that the scale of prices takes account, when appropriate, of differences in size and kind of castings, and that proper adjustments on such charges are made for the actual cost of castings as determined by reasonably frequent inventories of foundry materials or by other adequate foundry cost methods. The method of pricing foundry raw materials, particularly such higher cost materials as copper, spelter, aluminum, etc., must be consistent with the principles prescribed herein for the pricing of materials generally.

(i) *Central office expenses.* Whenever a contractor or subcontractor operates through a central or home office, expense of administration thereof shall be referred to the Administration for determination as to allowability in contract or subcontract performance costs.

(j) *Damages.* Damages payable by a contractor to the Board or the Administration, whether such payment be effected directly or by deduction from sums otherwise payable by the Board or Administration to the contractor, shall not be allowed.

(k) *Depreciation of plant facilities.* (1) Depreciation of buildings, machinery, equipment, and other plant facilities will be allowed as a cost in the determination of profit in general upon the basis of the schedule of rates of depreciation in current use by the contractor or subcontractor and taking into consideration the rates used by the Treasury Department for income tax purposes, including reasonable amortization of emergency facilities if covered by certificates of necessity, subject, however, to the approval of the Administration.

(2) In the case of buildings, machinery, equipment and other plant facilities subject to depreciation which are used in and are necessary for performance of a contract or subcontract and which during the performance or upon the completion of the contract or subcontract are demolished, dismantled, sold as used machinery or equipment or as scrap or, in the absence of a market therefor, are abandoned, in such manner and under such circumstances as shall establish the fact to the satisfaction of the Administration that such demolition, dismantlement, sale or abandonment is in good faith and not with a view to continued use in the contractor's or subcontractor's business, the depreciation chargeable against operations on account thereof may be redetermined upon the basis of the facts as to useful life and residual value as thus established, and the proportion of such depreciation as so redetermined applicable to contracts or

subcontracts with respect to which a final determination of profit shall not theretofore have been made shall be allowed in determining the profit thereunder.

(l) *Directors' fees.* Fees and traveling expenses in connection with authorized meetings of Boards of Directors are allowable as distributable overhead: *Provided,* That such fees and expenses are reasonable, and are in accordance with contractors' or subcontractors' usual procedure, subject to the limitation provided in paragraph (oo) of this section.

(m) *Discounts.* Earned discounts of all kinds, including trade discounts, cash discounts, special allowances, etc., must be taken into account in such manner that, in the determination of profit, effect is given to the net prices actually paid. Discounts taken on material bills may be deducted from the purchase price in charging to inventory or to the contract or subcontract, or the discounts may be accounted for by distributing discounts earned as a credit item in the overhead, or by a separate computation of net material cost or by such other means as may accord with the contractor's or subcontractor's accounting practice and this requirement of accounting for discounts. If a contractor fails to take advantage of discounts or allowances amounting to one percent or more, only the net amounts of invoices after deduction of such discounts shall be admissible as the cost of performance, unless adequate justification exists for failure to take discounts.

(n) *Donations.* Donations may not be taken into account except to the extent that necessary service is rendered to the contractor or subcontractor by the recipient, for example, donations to a local hospital serving the contractor or subcontractor or those which, by local general custom, constitute necessary and proper business expenses, such as donations to the Community Chest or the American Red Cross.

(o) *Dredging.* (1) Where it is the established practice of the contractor or subcontractor to accrue a reserve for dredging and to charge to such reserve the cost of particular dredging operations necessary for launching or for the maintenance of depth of water at and for access to the shipyard, such accruals may be taken into account as part of the overhead to the extent that it shall be shown that such accruals represent a reasonable average of such expenses actually incurred over an appropriate period. Direct charges for dredging are allowable only when no such reserve is included in the contractor's or subcontractor's established practice, and then only to such extent as may be reasonably allocated.

(2) In waters open to public navigation, in the absence of reserves for dredging, the costs of dredging may be charged to contract or subcontract performance costs provided such costs are equitably allocated to the contracts or subcontracts accommodated by such dredging.

(3) The initial cost of dredging of privately owned "slips" should be capitalized; amortization or depreciation of such costs is not allowable, but costs of redredging to established depths of such slips, in the absence of reserves, are allowable when properly allocated to contracts or subcontracts affected.

(p) *Drydocks.* Where the contractor or subcontractor uses its own drydock in the performance of the contract or subcontract, it is allowable to base the charge to the contract or subcontract for the use of such drydock upon the average cost of operation of the drydock, inclusive of maintenance, depreciation and taxes, as determined over a suitable accounting period not in excess of one year: *Provided,* That the total such charge shall not exceed an amount determined by use of the prevailing commercial rate for similar services in the vicinity or where the nearest comparable services are available.

(q) *Dues and memberships.* Dues and memberships in regular trade associations and technical societies are in general allowable if approved by the Administration's financial representative, but other dues and memberships may not be allowed.

(r) *Entertainment expenses.* Entertainment expenses are not allowable costs of performing a contract or subcontract. Reasonable luncheon costs necessarily incurred in the normal conduct of a contractor's or subcontractor's business may be allowed.

(s) *Excess material.* (1) Excess material refers to material, in usable condition, which is left over after a contract or subcontract is completed and resulting mainly from overpurchases, overproduction, overdrawn stores, or as a result of changes and extras. Excess material should not be confused with scrap which is such material as is produced during the course of construction or manufacture and which has only scrap value. (See paragraph (pp) of this section.)

(2) Material which has been charged to the cost of performing a contract or subcontract and is found in excess of actual requirements and has not been incorporated in the work shall be credited, at the reasonable value thereof, to the cost of performing the contract or subcontract to which it was originally charged.

(3) If such materials credited to cost are reissued for use in performing a contract or subcontract the materials should be charged into costs at amounts not in excess of the value agreed upon as the reasonable credit.

(t) *Excess profits.* Excess profits paid or repayable to the United States under any contract, whether under the Merchant Marine Act or otherwise, shall not be treated as a deduction or used in any way as a factor in the determination of profit under any other contract.

(u) *Expense and income—nonoperating.* Expense and income—nonoperating (including such items as Income from Investments, Interest, and Royalties, individually commented upon under their respective captions) ordinarily may not be taken into account in determining recapturable profit. Their inclusion in exceptional cases will be subject to the specific approval of the Administration.

(v) *Fees, legal, accounting, and other professional.* (1) Fees, Legal, Accounting, and other Professional, for services required in the performance of a contract or subcontract are allowable to the extent deemed reasonable by the Administration.

(2) Generally speaking, legal and accounting fees in connection with the prosecution of claims against the United States, including income tax matters, are not allowable costs. In cases, however, where such fees are incurred and result in successful adjudication or negotiation of the validity of a claim by a contractor or subcontractor, reasonable expenditures may be taken into account in connection with such contracts or related subcontracts with the Board or the Administration.

(w) *Fees of transfer agents and registrars.* (1) Fees of Transfer Agents and Registrars of stock or other securities and of trustees under mortgage or similar indentures, regularly employed in and necessary to the normal operation of the business, may be allowed as overhead costs, if reasonable in amount.

(2) Fees for the same purposes, covering the organization or reorganization of a corporation, shall not be allowed.

(x) *Fines and penalties.* Fines and penalties incurred for violation of law are not allowable in costs of performing a contract or subcontract.

(y) *Fuel, lube oil, and fresh water on board vessel on date of delivery.* Any quantity of fuel, lube oil, or fresh water remaining aboard on the date the vessel is delivered and accepted which is not covered by a contract specification requiring it to be aboard shall be inventoried and evaluated on the basis of prices at which purchased. The value of the inventory shall be credited to vessel construction costs and billed to the Administration which will pay for any reasonable quantities remaining in excess of construction and trial run needs. This procedure automatically excludes from vessel costs the value of the inventory of the items mentioned.

(z) *Guarantee period expenses.* Expenses incurred during the guarantee period, for the reconstruction of items determined by the Administration to be the contractor's or subcontractor's responsibility, are allowable as costs of performance of the contract or subcontract.

(aa) *Income from investments.* Income from investments shall not be taken into account in determining recapturable profit.

(bb) *Inspection services.* The reasonable cost of inspection services, such as those normally rendered by the American Bureau of Shipping, may be allowed in determining recapturable profit.

(cc) *Insurance.* (1) Monies paid into State funds for compensation insurance, and net premiums paid or accrued for payment to insurance companies for insurance of risks not found by the Administration to be unusual or excessive coverage or inconsistent with reasonable and prudent business practice are allowable items of cost.

(2) If the contractor or subcontractor assumes its own insurable risks (i) for compensation payable to employees for injuries received in the performance of their duties, or (ii) for unemployment risks in States where insurance is required, or (iii) for other risks not found by the Administration to be excessive or unusual coverage or inconsistent with reasonable and prudent business practice, there may be allowed in costs the charges set up for such self-insurance under a system of accounting regularly and consistently employed by the contractor or subcontractor, at rates not exceeding the lawful or approved rates of insurance companies for such insurance reduced by amounts representing the "acquisition cost" (i.e., commissions, fixed expenses and excess losses) in such companies and after giving effect to any credits for safety provisions, experience, etc., to which the contractor or subcontractor would be entitled in determining such rates, but losses actually sustained must be charged only to the reserves created by such self-insurance charges.

(3) If the contractor or subcontractor assumes its own insurable risks and does not record current charges to operations in the manner contemplated by paragraph (cc)(2) of this section, losses sustained from such risks during the performance of the contract or subcontract shall be allowable only by such means and to such extent as the Administration considers equitable under the circumstances attendant upon a specific case.

(4) If the contractor or subcontractor assumes its own insurable risks and its practice with respect to charges therefor is not covered by the principles set forth in paragraphs (cc)(1), (2) and (3) of this section, the contractor or subcontractor shall submit the matter to the Administration for determination at the earliest practicable date after execution of the contract or subcontract, and such charges shall be taken into account in such manner as the Administration shall determine.

(5) Premiums covering insurance on the lives of corporate officers, partners, proprietors, or other executives or employees, where the contractor or the subcontractor is the beneficiary directly or indirectly, shall not be allowed in determining recapturable profit.

(6) Reasonable premiums and other reasonable costs of group insurance plans in existence on the date the contract or subcontract was awarded and consistently administered are allowable. No costs under group insurance plans effective after such date will be allowed unless the plan is specifically approved by the Administration.

(dd) *Interest.* (1) Interest received, paid, or accrued for receipt or payment will not be taken into account in determining profit except that reasonable amounts of interest on bank loans of a contractor for construction, reconditioning or reconstruction of a ship obtained for the purpose of discounting bills or for current working funds, which loans mature not later than six months after the date of delivery of the last vessel covered by the contract, may be allowed to the extent attributable to the contract: *Provided,* That interest on such loans shall not be allowed unless the contractor shall show to the satisfaction of the Administration the necessity for such loans.

(2) Similarly, interest on bank loans of other types of contractors and subcontractors (for example, suppliers of direct materials), when deemed by the Administration to be reasonable and for the purposes enumerated in the preceding subparagraph of this paragraph, shall be allowed to the extent attributable to performance under the contract or subcontract: *Provided also,* That such loans mature not later than six months after the date of timely delivery of the last material or timely performance of the last service, excluding provisions of the guarantee clause.

(ee) *Intracompany and intercompany charges.* (1) Intracompany transfers between plants or divisions must be made at cost, excluding any internal or intermediate profit.

(2) Transactions with subsidiary, affiliated or controlled companies covering material purchases or transfers, services, expense allocations or any other type of charge must be disclosed fully. The net allowable cost of intercompany transactions may not exceed the cost of comparable goods or services from alternative outside sources.

(ff) *Launching expense—ceremonial.* The following is prescribed as a general guide, in connection with vessels constructed by the Administration for Government use, to the nature of expenses incidental to launching ceremonies which will be regarded as not excessive and, consequently, chargeable to performance costs.

(1) In particular instances where a budget or a program for launching ceremonies has been approved by the Administration, or where special instructions with respect thereto have been issued by the Administration, such budget, program, or instructions will govern.

(2) In other cases, expenses not deemed to be excessive would include such items as the erection of launching platform and decorations, erection and use of public address system, christening champagne and preparation of bottle, but would not include expenses of reception, banquets, transportation and entertainment of guests, sponsor's gift and other incidental expenses. In general, traveling and hotel expenses of the sponsor and escort, and cost of invitations are unallowable unless otherwise designated by the Administration in specific instances.

(gg) *Liquidated damages.* Liquidated damages paid by a contractor or subcontractor for failure to meet contract or subcontract requirements are not allowable costs of performance.

(hh) *Losses or profits under other contracts and subcontracts.* In the determination of excess profit under the provisions of contracts executed under the authority of the Merchant Marine Act, 1936, as amended, and under subcontracts related thereto, such contracts and subcontracts, completed in a taxable year, shall be grouped for the determination of excess profit: *Provided, however,* That there shall not be grouped with any such contracts or subcontracts any contracts authorized under acts other than the Merchant Marine Act, 1936, as amended, or any subcontracts thereunder. In the determination of excess profit under the provisions of contracts executed under the authority of acts other than the Merchant Marine Act, 1936, as amended, such contracts and related subcontracts may be grouped only when the provisions of the respective contracts and subcontracts so stipulate.

(ii) *Maintenance and repair costs.* Maintenance and repair costs which are of such a nature and extent as under generally accepted accounting practice are chargeable to depreciation reserve or capitalized may not be taken into account except through proper charges for depreciation. Job orders for such major plant and equipment maintenance or repairs should be submitted to the Administration before such work is undertaken or while it is in progress, for a determination as to whether or not the costs may properly be charged to current operations. Major plant and equipment maintenance or repair expenditures, the orders for which are not so submitted before or while the work is in progress, will be deemed to be capital expenditures or chargeable to depreciation reserve unless it shall be shown otherwise to the satisfaction of the Administration.

(jj) *Material operations—departmental.* In cases where a contractor or subcontractor manufactures for stores or for direct charge to a contract or subcontract items such as rivets, paint, acetylene, etc., such items may be charged upon a fixed price basis, provided that proper adjustments approved by the Administration are made to such charges at reasonably frequent accounting intervals so as to reflect their actual cost.

(kk) *Organization and reorganization expenses.* Costs incident to the formation or refinancing of corporations, partnerships, or proprietorships such as the issuance of capital stock, bonds or other securities, taxes on the issue or transfer of securities, discounts on securities sold, bankers' commissions, or other like financial costs, legal and accounting fees involved in developing organizations or reorganizations, shall not be allowed in determining recapturable profit.

(ll) *Pension and retirement payments.* Pension and retirement payments to employees and payments made into trust funds for pension and retirement purposes: *Provided,* That such trust funds are alienated from the contractor's ownership, may be allowed in the determination of recapturable profit. The Administration shall, in every case, be satisfied that the payments are reasonable in amount and are consistently and equitably distributed.

(mm) *Reserves.* Charges resulting in the creation or increase of reserves for general contingencies or other reserves which are not properly chargeable to current operations shall not be allowed.

(nn) *Royalties.* (1) Income from royalties shall not be taken into account in determining recapturable profit under contracts or subcontracts.

(2) In some cases, royalty expense in connection with material or equipment furnished under a contract or subcontract is not properly chargeable inasmuch as the Government may have a royalty-free license for such material or equipment. Under the Royalty Adjustment Act of 1942, the Government has negotiated a number of agreements providing for the waiver of, or reduction in, royalties. As some agreements are in force and others may be executed, all royalty agreements should be referred to the Administration.

(oo) *Salaries.* (1) Contracts, and subcontracts thereunder, ordinarily limit the per annum rate of salary for the purpose of determining profit. The limitation applies to the full time of an individual. Accordingly, when an individual devotes only a portion of his time to a contractor or subcontractor, the limitation will be reduced proportionately.

(2) "Salary" is construed in its broadest sense to include a bonus, director's fee, and all other forms of compensation. Charges or accruals for salaries, year-end bonuses, vacation pay, or other compensation, not actually paid at the date of completion of a contract or subcontract must be approved by the Administration as to allowability.

(pp) *Scrap.* Scrap is such material as is produced during the course of construction or manufacture and having only scrap value and should not be confused with excess material (see paragraph (s) of this section). Scrap must be credited at the price obtained when sold, or at the current market price if used by the contractor or subcontractor or held for sale beyond the period of the contract or subcontract. If practicable, the credit should be given to the job from which the scrap was derived, otherwise credit should be given through distributable overhead at reasonably frequent intervals.

(qq) *Selling expenses.* (1) Generally, expenses incurred for the distribution of the products of a contractor through usual trade and business channels and methods are not regarded as allowable costs under contracts for the reason that such expenses are not incident to or necessary in doing business with the Government.

(2) Ordinary selling expenses should not be confused with technical, consulting and other services of the application and adaptation of products to the uses and requirements of the customer. Manufacturers' employees attached to sales departments, who are primarily technicians and product service engineers, render services that are as important and essential when products are sold to the Government as when they are sold to other customers.

(3) Special premiums, bonuses, commissions, etc., paid in connection with negotiations for or the procurement of a contract are not allowable in determining the cost of performing the contract.

(4) Selling expenses which represent the cost of marketing an article, as distinguished from the cost of producing an article, are not to be considered a part of the cost of performing a contract.

(5) Reasonable selling expenses consistent with the normal and usual practice of a subcontractor may be al-

lowed in determining the cost of performing a subcontract.

(rr) *Taxes.* (1) Income and excess profit taxes and surtaxes, Federal, State and other, are not allowed as contract or subcontract performance costs; such taxes merely represent a payment of a part of the net profits to the Government.

(2) Franchise and excise taxes, property taxes (except taxes on property held in reserve or for investment, or for other extraneous purposes), social security taxes and the like (not including payments deducted from or chargeable to employees, including corporate officers) are allowable cost items. In those cases where a State franchise tax is in lieu of a State income tax, the portion thereof deemed to be paid for the exercise of the right to do business and the portion thereof deemed to be a tax on income shall be determined by the Administration.

(3) Taxes for which exemptions are available are not allowable costs.

(ss) *Towing.* Where the contractor or subcontractor uses its own tugs or other floating equipment in the performance of a contract or subcontract, reasonable charges therefor are allowable.

(tt) *Travel expenses.* (1) The actual costs of authorized business trips such as transportation, maintenance, communication and other necessary business costs of the traveler during his period of travel may be allowed to the extent such costs are shown to the Administration to be reasonable and equitably charged to a contract or subcontract.

(2) The Administration may accept in lieu of such actual costs a reasonable allowance agreed upon by the traveler prior to his departure if such allowance is deemed to be warranted by the circumstances, conditions, and nature of the assignment involved.

(uu) *Unclaimed wages.* Unclaimed wages charged to contracts and subcontracts shall be adjusted by an allowance for future claims against unclaimed moneys and the remainder shall be ratably credited to the cost of performing the contracts and subcontracts. The allowance and the credit must be satisfactory to the Administration.

(vv) *Unreasonable charges.* Excessive or unreasonable payments, as for example, exorbitant compensation to anyone, expenditures for the personal benefit of officers of the contractor or subcontractor, payments in excess of reasonable market values of any kind including payments to affiliates and payments to individuals who are associated with the contractor or subcontractor through directorship or employment, whether in cash, stock, or other property, shall not be allowed as costs in determining recapturable profit.

(ww) *Welfare expense—employee.* Welfare expense—employee is allowable as a part of overhead, subject to proper distribution, provided the contractor or subcontractor shall, if required, show the reasonableness thereof to the satisfaction of the Administration.

FILING OF REPORTS

§ 285.61 Contractors.

A contractor for the construction, reconditioning or reconstruction of a ship shall file with the Administration a notarized Shipbuilder's Report of Profit with respect to each contract, in the form prescribed from time to time by the Administration (see accompanying Form MA-250),[1] within 90 days after the expiration of the guarantee period prescribed by the contract, unless the time for filing such report be extended by the Administration. Other contractors shall file on the form prescribed from time to time by the Administration (see accompanying Form MA-251)[1] as soon as possible after the completion of the contract or the expiration of the guarantee period but in no event later than 90 days after the date upon which the contractor is required to file Federal income tax returns (or as extended). Such reports shall reflect all information indicated in the prescribed forms.

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[1] Filed as part of the original document with the Office of the Federal Register; requests for copies should be addressed to the Coast Directors or Maritime Administration, Department of Transportation, Washington, DC 20590.

[G.O. 30, Rev., 17 FR 7594, Aug. 20, 1952, as amended at 33 FR 2944, Feb. 17, 1968]

§ 285.62 Subcontractors.

Each subcontractor whose subcontract is subject to a profit-limiting provision shall file with the Administration as soon as possible after the completion of the subcontract or the expiration of the guarantee period, but in no event later than 90 days after the date upon which it is required to file its Federal income tax return (or as extended), a report, notarized, with respect to each such subcontract completed by it within the income taxable year, setting forth in the form prescribed from time to time by the Administration (see accompanying Form MA-252)[1] the total contract price, the total cost of performing the subcontract, the amount of overhead charged to such cost and such other information as indicated upon the report form.

§ 285.63 Transmittal.

All reports made by a contractor for the construction, reconditioning or reconstruction of a ship or other contractor or by a subcontractor, should be mailed to the Maritime Administration, Department of Transportation, Washington, D.C.

§ 285.64 Revision of report forms.

The Administration may from time to time revise the form of reports required in this part. Contractors and subcontractors should obtain current forms from the Administration.

PART 287—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

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AUTHORITY: Secs. 204, 511, 49 Stat. 1987, as amended, 54 Stat. 1106, as amended; 46 U.S.C. 1114, 1161.

SOURCE: General Order 38 (2d Rev.), 30 FR 7215, May 29, 1965; 30 FR 8162, June 25, 1965, unless otherwise noted.

EDITORIAL NOTE: The regulations contained in this part were codified by the Internal Revenue Service in Treasury Decision 6820, 30 FR 6030, Apr. 29, 1965. For text see also 26 CFR part 2.

§ 287.1 Definitions.

(a) As used in the regulations in this part, except as otherwise expressly provided—

(1) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C., ch. 27).

(2) "Section" means one of the sections of the regulations in this part.

(3) "Administration" means the Maritime Administration of the Department of Transportation.

(4) "Citizen" means a person who, if an individual, was born or naturalized as a citizen of the United States or, if other than an individual, meets the requirements of section 905(c) of the Act and section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).

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[1] See footnote to § 285.61.

(5) "Taxpayer" means a citizen who has established or seeks to establish a construction reserve fund under the provisions of section 511 of the Act and the regulations in this part, and may include a partnership.

(6) "Corporation" includes associations, joint-stock companies and insurance companies.

(7) "Stock" includes the shares in an association, joint-stock company, or insurance company.

(8) "Affiliate" or "associate" means a person directly or indirectly controlling, controlled by, or under common control with, another person.

(9) "Control", as used in paragraph (a)(8) of this section, means the possession of the power to direct in any manner the management and policies of a person, and the terms "controlling" and "controlled" shall have the meanings correlative to the foregoing.

(10) "Person" means an individual, a corporation, a partnership, an association, an estate, a trust, or a company.

(11) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization.

(12) "Construction", if so determined by the Administration, shall include reconstruction and reconditioning.

(13) "Reconstruction and reconditioning" shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Administration determines that the objectives of the Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a "new vessel" within the meaning of section 511 of the Act for such reconstruction, reconditioning, or modernization.

(14) "Purchase-money indebtedness" means any indebtedness, or evidence thereof, created as the result of the purchase of a vessel by the taxpayer.

(15) "Contract", "contract for the construction", and "construction contract" shall include, if so determined by the Administration, a contract for reconstruction or reconditioning and shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement, between such taxpayer and the Administration with respect to such construction, and containing provisions deemed necessary or advisable by the Administration to carry out the purposes and policy of section 511 of the Act.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulations in this part, except as otherwise provided, have the same meaning as in the Internal Revenue Code and the regulations thereunder.

§ 287.2 Scope of section 511 of the Act and the regulations in this part.

(a) *Applicability of regulations.* The regulations prescribed in this part—

(1) Apply to gain realized from the sale or loss of vessels, earnings from the operation of vessels, and interest (or otherwise) with respect to amounts previously deposited in the construction reserve fund, for a taxable year beginning after December 31, 1964, and

(2) Apply to the expenditure, obligation, or withdrawal, during a taxable year beginning after December 31, 1964, of any deposits of gain, earnings, and interest (or otherwise) of the character referred to in paragraph (a)(1) of this section without regard to the taxable year in which the deposits were made.

(b) *Nonrecognition and accumulation.* Section 511 of the Act provides, under conditions specified, for the nonrecognition, for income and excess-profits tax purposes, of the gain realized from the sale or indemnification for loss of certain vessels including certain vessels in the course of construction, or shares therein. It also permits the accumulation of the proceeds of such sales or indemnification and of certain earnings without liability under Part I (section 531 and following), Subchapter G, Chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder (26 CFR 1.531 through 1.537-1 (Income Tax Regulations)).

(c) *Availability of benefits.* The benefits of section 511 of the Act are available to any citizen as defined in paragraph (a)(4) of § 287.1, who, during any taxable year owns, in whole or in part, a vessel or vessels within the scope of § 287.3. A citizen operating such a vessel or vessels owned by any other person or persons can derive no benefit from the provisions relating to the nonrecognition of gain from the sale or loss of such vessel or vessels so owned, but may establish a construction reserve fund in which he may deposit earnings from the operation of such vessel or vessels.

(d) *Applicability of section 511.* Section 511 of the Act applies only with respect to sales or losses of vessels within the scope of § 287.3 or in respect of earnings derived from the operation of such vessels. A loss to be within section 511 of the Act must be an actual or constructive total loss. Whether there is a total loss, actual or constructive, will be determined by the Administration.

§ 287.3 Requirements as to vessel operations.

Section 511 of the Act applies with respect to vessels operated in the foreign or domestic commerce of the United States or in the fisheries of the United States and vessels acquired or being constructed for the purpose of such operation. The foreign commerce of the United States includes commerce or trade between the United States (including the District of Columbia), the territories and possessions which are embraced within the coastwise laws, and a foreign country or other territories and possessions of the United States. The domestic commerce of the United States includes commerce or trade between ports of the United States and its territories and possessions, embraced within the coastwise laws and on inland rivers. The fisheries include the fisheries of the United States and its territories and possessions. Section 511 of the Act does not apply to vessels operated in the foreign commerce or fisheries of any country other than the United States.

§ 287.4 Application to establish fund.

(a) Any person claiming to be entitled to the benefits of section 511 of the Act may make application, in writing, to the Administration for permission to establish a construction reserve fund. The original application shall be executed and verified by the taxpayer, or if the taxpayer is a corporation, by one of its principal officers, in triplicate, and shall be accompanied by eight conformed copies when filed with the Administration.

(b) Form of application:

Application for Permission To Establish a Construction Reserve Fund Under Sec. 511, Merchant Marine Act, 1936, as Amended

The undersigned applicant, ——, hereby applies, under section 511, Merchant Marine Act, 1936, as amended, and the regulations prescribed by the Secretary of Transportation acting by and through the Maritime Administrator (hereinafter referred to as "Administrator") (46 CFR Part 287) and the Secretary of the Treasury, Internal Revenue Service (26 CFR Part 2) for permission to establish a construction reserve fund to be used for the construction or acquisition of a new vessel or vessels as defined by subsection (a) of said section 511, and submits in support of its application the following information:

A. *Identity and nationality of applicant.*

1. Exact name.

2. Status (individual, partnership, corporation, etc.).

3. Give the place of incorporation—whether under the laws of the United States, or of a State, Territory, District, or possession thereof.

4. Address of principal executive offices.

5. A statement, if applicant is an individual or a partnership, should be attached to the application in affidavit form, containing information that applicant is a citizen of the United States by virtue of birth in the United States, naturalization, etc.; give place and date of birth and/or naturalization; if derivative U.S. citizenship is alleged through naturalization of parent while a minor, the number, date and place of issue of the certificate of derivative citizenship of applicant should be cited together with any other pertinent details relative thereto.

6. (a) The name, office, and nationality of each officer and director of the applicant owning shares of stock in the corporation should be submitted together with the number and class of capital shares owned.

(b) In order that the U.S. citizenship status of a corporation applicant may be determined by the Administration, an affidavit as in accordance with Part 355 of this Chapter shall be furnished together with a current copy of the Articles or Certificate of Incorporation certified by the Secretary of the State where incorporated (or appropriate officer, if other than a State, as provided in "A.3" above), and a copy of the current By-Laws certified by the Secretary of the Corporation.

7. The name, address and nationality of, and number and class of capital shares owned by, each person not named in answer to Item 6, owning of record, or beneficially if known, 5 percent or more of the outstanding capital shares of any class of the applicant. (The applicant shall be required, upon request, to furnish such additional data as may be deemed necessary to establish the U.S. citizenship of the applicant pursuant to section 2, Shipping Act, 1916, or section 905(c), Merchant Marine Act, 1936, as amended.)

8. A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights in any shares of the applicant are owned, controlled or exercised, or whereby the control of the applicant is in any way held or exercised by any person not the holder of legal title to such shares. Give the name, address, nationality, and business of any such person, and, if not an individual, the form of organization.

B. *Business of the applicant and proposed use of the new vessel.*

9. A brief description of (a) the shipping business, or (b) the fishing business, and (c) any other business activities of the applicant.

10. If engaged in the domestic or foreign commerce of the United States, full details concerning the services, routes, or lines on which vessels owned or chartered by the applicant are or have been operated.

11. If applicant is engaged in the fisheries of the United States, full details concerning the location of the fishing operations and the method employed.

C. *Proceeds to be deposited.*

12. If applicant proposes to deposit the proceeds from the sale of a vessel, a description of the transaction from which the funds were obtained, including the name of the vessel sold, name of purchaser, selling price, date and terms of sale, consideration received by the applicant, amount and description of any mortgage or other lien on the vessel at the time of sale, whether such mortgage or lien was satisfied from the proceeds of sale, brief description of vessel as to size, speed, tonnage, etc., age of vessel at the time of sale, and value and accrued depreciation for income tax purposes at time of sale.

13. If applicant proposes to deposit proceeds of indemnity from loss of a vessel, the name of the vessel, date and description of the loss, amount of indemnity and date received, name of underwriter, amount and description of any mortgage or other lien on the vessel at time of loss, whether such mortgage or lien was satisfied from the proceeds of the indemnity, age of vessel at time of loss, brief description of vessel as to size, speed, tonnage, etc., and value and accrued depreciation for income tax purposes at time of loss.

14. If applicant proposes to deposit earnings from the operation of vessels, a statement of the amount of such earnings to be deposited, the period during which earned, and their source, including the vessels, services, routes, or lines involved.

D. *The new vessel.*

15. Statement whether applicant proposes: (a) To have a new vessel built to specifications, or (b) to acquire a vessel already constructed or under construction. If the former, and a contract for construction has been entered into at the time of the making of this application, state the date said contract was entered into, the parties thereto, the terms thereof, and date of delivery thereunder. If the latter, give name of vessel, builder, from whom purchased, or to be purchased, date when construction commenced, and date when delivered, or if vessel is still under construction, anticipated date of delivery.

16. The general characteristics of the proposed new vessel, including (a) principal dimensions; (b) gross, net and deadweight tonnage; (c) bale and grain capacities of all cargo holds; (d) capacities of all tanks, storage spaces, refrigerator cargo spaces and separately chilled cargo spaces; (e) number and classes of passenger accommodations; (f) type and power, and in case of steam machinery, the gauge pressure, total temperature, and vacuum expected of propulsive machinery; (g) kind of fuel to be burned; and (h) sustained sea speed at designed load draft.

17. If the proposed new vessel is to operate in the domestic or foreign commerce of the United States, a statement of how it will meet the needs of the service, route or line for which it is intended, with emphasis on the following factors: (a) Cargo accommodations—cargo space and fittings and appliances for handling and stowing cargo; (b) passenger accommodations; (c) construction and design; and (d) accommodations for officers and crews.

18. If the proposed new vessel is to be operated in the fisheries of the United States, a description of the vessel, and a statement of how the vessel will meet the needs of such operations.

19. If the proposed new vessel is intended to replace a vessel or vessels requisitioned or purchased by the United States, a statement of how the proposed replacement vessel will meet the needs of the service, route, line, or use for which it is intended.

20. If the proposed new vessel is less than 2,000 gross tons or of less speed than 12

knots, a description of the features which would make it desirable for use by the United States in case of war or national emergency.

E. *The construction reserve fund.*

21. A description of the deposit or deposits which the applicant proposes to make in the construction reserve fund, including the amounts to be deposited in cash, notes, mortgages or other evidences of indebtedness, irrevocable commitments, or securities, giving reference to the source as described in items C-12, C-13, or C-14.

22. Name and address of proposed depository or depositories for the construction reserve fund.

F. *Taxable year of applicant.*

23. Whether applicant files its Federal income tax return on a calendar year or fiscal year basis and if on the latter, the beginning of its fiscal year.

G. *Exhibits to be furnished.*

24. The following documents shall be filed as exhibits attached to the application:

Exhibit I—If available at the time this application is filed, an authenticated copy of any irrevocable commitment to finance the construction or acquisition of the new vessel proposed to be deposited in the construction reserve fund pursuant to the provisions of 46 CFR 287.13(d).

Exhibit II—If the applicant is a corporation, a copy of each contract or agreement presently in effect, referred to in answer to Item 8.

H. *Covenants of the applicant.*

25. The applicant hereby agrees as follows:

(a) That the construction reserve fund shall be subject to the provisions of section 511, Merchant Marine Act, 1936, as amended, to the regulations prescribed by the Administrator, and the Secretary of the Treasury with respect to the establishment, maintenance, expenditure, and use of such fund, and to such resolutions as may be adopted by the Administrator with respect to such fund;

(b) That it will furnish copies of any contracts entered into for the construction or acquisition of new vessels which the Administrator may require;

(c) That it will furnish hull plans and specifications, machinery plans and specifications, and data with respect to communication facilities if and to the extent required by the Administrator; and

(d) If no contract for the construction of a new vessel as set forth in Paragraph D, subdivision 15(a) hereof, has been entered into at the time of making of this application, it will, upon entering into said contract, furnish to the Administrator the date thereof, the parties thereto, the terms thereof and date of delivery thereunder. Name of applicant:

____

(Date) ______________________________

By ______________________

(Name, typed)

____

(Title)

____

(Signature)

I, ————, certify that I am the ———— (Title of office) of ———————— (Exact name of applicant) the applicant on whose behalf I am authorized to execute the foregoing application and agreements; that the applicant is a citizen of the United States, in accordance with the requirements of the Merchant Marine Act, 1936, as amended; that this application is made for the purpose of inducing the Secretary of Transportation, represented by the Maritime Administrator to grant to the applicant, pursuant to the provisions of section 511 of the Merchant Marine Act, 1936 as amended, and the regulations promulgated by the Secretary of the Treasury and the Maritime Administrator thereunder, with all of which I am familiar, permission to establish a construction reserve fund; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

Date:

____

(Name)

____

(Title)

____

(Signature)

Attention: A false statement in this application is punishable by law (18 U.S.C. 1001).

INSTRUCTIONS AS TO PREPARATION OF APPLICATION

1. Applications shall be prepared in the form provided according to the lettered items and serially numbered paragraphs. They must be signed and sworn to as provided. Eleven copies of the applications shall be filed with the Maritime Administrator, at least one copy of which shall be signed.

2. Each application shall be complete. Items or part of items which are inapplicable may, however, be omitted. The information required by Article 25 need be furnished only as stated in that item. The applicant may incorporate by specific reference information previously furnished the Maritime Administrator provided that such

information so incorporated shall have been furnished at least in triplicate.

3. If any information called for by an applicable item is not furnished, and explanation of the omission shall be given. The applicant may furnish such relevant information as it may desire, in addition to that specified in the form.

4. Any additional information called for by the Maritime Administrator from time to time shall be furnished as an amendment or amendments to the application. The original and 11 copies of each amendment shall be filed, shall refer to the application, and shall be identified as an amendment and dated. Without any specific request from the Maritime Administrator the applicant shall file from time to time as amendments any information necessary to keep the information contained therein or furnished in connection therewith current and correct while the application is pending.

(c) *Fee.* Each such application shall be accompanied by the sum of $225, which sum will be retained to recover the cost of processing the application.

(Approved by the Office of Management and Budget under control number 2133-0032)

[G.O. 38, 2d Rev., 30 FR 7215, May 29, 1965, as amended by Amdt. 1, 31 FR 3397, Mar. 4, 1966; 47 FR 25530, June 14, 1982]

§ 287.5 Tentative authorization to establish fund.

Where the time between the receipt by the Administration of the application for permission to establish a construction reserve fund and the date prior to which an amount received from the sale or loss of a vessel must be deposited to come within the scope of section 511 of the Act is insufficient to permit a determination of the eligibility of the applicant, the Administration may tentatively authorize the establishment of a construction reserve fund and the deposit of such amount therein. Such tentative authorization shall be subject to rescission by the Administration if subsequently it is determined that the applicant is not entitled to the benefits of section 511 of the Act, or has not complied with the statutory requirements. For example, a tentative authorization will be rescinded if the Administration ascertains that the applicant is not a citizen. Upon such determination, the fund shall be closed and all amounts on deposit therein shall be withdrawn.

§ 287.6 Establishment of fund.

(a) *Authorization by the Administration.* If the application is approved by the Administration, the Administration will adopt Orders authorizing the establishment of a construction reserve fund with the depository or depositories designated by the taxpayer and approved by the Administration. The Orders will provide for joint control by the Administration and the taxpayer over such fund, will set forth the conditions governing the establishment and maintenance of the fund and the making of deposits therein and withdrawals therefrom, and will designate the representatives authorized to execute instruments of withdrawal on behalf of the Administration.

(b) *Resolution or agreement of the taxpayer.* A certified copy of the Orders of the Administration will be furnished the taxpayer. If the taxpayer is a corporation, it shall promptly adopt, through its board of directors, a resolution satisfactory in form and substance to the Administration, authorizing the establishment and maintenance of the fund in conformity with the action of the Administration. If the taxpayer is not a corporation, it shall promptly execute an agreement with the depository satisfactory in form and substance to the Administration to conform to the action of the Administration as set forth in the Orders. Certified copies of the Orders of the Administration and of the resolution of the taxpayer (if it is a corporation) will be furnished to the depository by the Administration and the taxpayer, respectively, for its guidance in maintaining the fund and honoring instruments of withdrawal. The taxpayer, if a corporation, shall also furnish the Administration with a certified copy of its resolution, or if not a corporation a duplicate original of its agreement with the depository.

NOTE: The resolutions referred to in this section shall be retained 2 years after a final release or settlement agreement is completed between the Maritime Administration/Maritime Subsidy Board and the taxpayer.

(c) *Constructive action not recognized.* Constructive deposits, substitutions or withdrawals will not be recognized by the Administration in the establishment and maintenance of the fund.

(d) *Failure to make deposits as basis for termination of fund.* In the event no deposit is made into the fund for more than five years, any amounts remaining in the fund shall be removed from the fund at the discretion of the Administration and, if so removed, the fund shall be terminated. In the event of such termination, see § 287.23 for recognition of gain.

§ 287.7 Circumstances permitting reimbursement from a construction reserve fund.

(a) *Payments prior to establishment of fund.* If, prior to the establishment of a construction reserve fund under the regulations in this part, a taxpayer has made necessary payments under a contract which satisfies the provisions of the regulations in this part and section 511 of the Act for the construction or acquisition of a new vessel, such taxpayer may, if subsequently authorized to establish a construction reserve fund under the regulations in this part, draw against such fund as reimbursement for the amount, if any, of other funds which, with the approval or ratification of the Administration, the taxpayer used for making such necessary payments prior to the establishment of the fund.

(b) *Payments subsequent to establishment of fund.* If, subsequent to the establishment of a construction reserve fund under the regulations in this part, the taxpayer has made necessary payments under a contract which satisfies the provisions of the regulations in this part and section 511 of the Act for the construction or acquisition of a new vessel, such taxpayer may draw against such fund as reimbursement for the amount, if any, of other funds which, with the approval or ratification of the Administration, the taxpayer had used for the purpose of making such necessary payments.

§ 287.8 Investment of funds in securities.

(a) *Obligations of or guaranteed by the United States.* Interest-bearing direct obligations of the United States, or obligations fully guaranteed as to principal and interest by the United States may be deposited in the construction reserve fund in lieu of cash, may be purchased with cash on deposit in the fund, or may be substituted for securities or commitment to finance in the fund, subject to the provisions of paragraph (b) of this section.

(b) *Other securities.* In cases where the taxpayer desires to deposit any securities in the fund in lieu of cash other than those of or guaranteed by the United States or to purchase such other securities with cash on deposit in the fund, or to substitute such other securities for securities or commitment to finance in the fund, the taxpayer shall make written application to the Administration and shall not consummate the transaction until the written consent of the Administration shall have been received. The application shall describe the securities fully. Every approval by the Administration of such application shall be conditioned upon agreement by the taxpayer forthwith to dispose of such securities upon subsequent request by the Administration. Immediately upon the purchase of any securities for deposit in the fund, the taxpayer shall advise the Administration, giving the date of purchase, a description of the securities, and the price paid therefor (net, brokerage and other charges, and gross). Ordinarily, the Administration will not approve the deposit in the fund in lieu of cash, or the purchase with cash on deposit in the fund or the substitution for securities in the fund of securities not actively traded in on exchanges registered under the Securities Exchange Act of 1934 (15 U.S.C. Chapter 2B), or securities which are not legal for investment of trust funds. Whenever the Administration approves the substitution of other securities for securities in the fund such substitution shall be effected only upon or after the deposit of the substituted securities into the fund.

(c) *Cash.* Cash may be substituted for amounts which are on deposit in the fund in any other form.

(d) *Devalued securities.* In the event the Administration determines that the market value at any date of any securities in the fund has decreased to a figure which is less than 90 percent of the market value at the time of deposit into the fund, then within 60 days after the taxpayer receives notice of such determination the taxpayer shall (except as otherwise provided in this paragraph) deposit into the fund cash or securities in an amount equal to the difference between the current market value of the devalued securities and the market value of such securities at the time of their original deposit. However, if any securities in the fund are valued at the time of their deposit at less than the market value of such securities at the time of their deposit the taxpayer shall be required to deposit only an amount equal to that portion of the difference between the current market value of the devalued securities and the market value of such securities at the time of their original deposit which bears the same ratio to such total difference as the amount at which the securities were valued at the time of their deposit bears to the market value at the time of such deposit.

§ 287.9 Valuation of securities in fund.

(a) *Equipment values.* In cases where securities are deposited in the fund in lieu of cash, or are purchased with cash on deposit in the fund, or are substituted for securities in the fund, the value of such securities must not be less than the amount of cash in lieu of which they are so deposited or with which they are so purchased, or the value at the time of deposit of the securities for which they were so substituted. If the securities on deposit in the fund are replaced by cash from the general funds of the taxpayer, the amount of cash to be deposited in the fund in lieu thereof shall be not less than the amount at which such securities were valued at the time of their deposit in the fund.

(b) *Determination of value.* (1) For the purpose of determining the amount in the fund, the value of securities shall be their "market value" (which shall be the basis for determining value, unless otherwise agreed to by the administration) and shall be determined in the following manner:

(i) In instances where no actual purchase is involved, such as the initial deposit of securities in the fund in lieu of cash, the last sales price thereof on the principal exchange on the day the deposit was made shall be deemed to be the "market value" thereof, or, if no such sales were made, the "market value" thereof will be determined by the Administration on such basis as it may deem to be fair and reasonable in each case.

(ii) In instances where the purchase of securities with cash on deposit in the fund is involved, "market value" shall be the gross price paid (adjusted for accrued interest); *Provided,* That if such securities are purchased otherwise than upon a registered exchange the price shall be within the range of transactions on the exchange on the date of such purchase, or, if there were no such transactions, then the "market value" thereof will be determined by the Administration on such basis as it may deem to be fair and reasonable in each case.

(2) Purchase-money obligations secured by mortgages on vessels sold or irrevocable commitments to finance the construction or acquisition of new vessels which are deposited in the construction reserve fund as provided in § 287.13 ordinarily will be considered as equivalent to their face value.

§ 287.10 Withdrawals from fund.

(a) *Withdrawals for obligations or liquidation.* (1) Checks, drafts, or other instruments of withdrawal to meet obligations under a contract for the construction or acquisition of new vessel or vessels or for the liquidation of existing or subsequently incurred purchase-money indebtedness, after having been executed by the taxpayer, shall be forwarded to the Administration in Washington, D.C., with appropriate explanation of the purpose of the proposed withdrawal, including properly certified invoices or other supporting papers. Such instruments of withdrawal, if payable to the Administration, will be deposited by the Administration for collection, and the proceeds thereof, upon collection, will be credited to the appropriate contract with the Administration; but if drawn to the order of payees other than the Administration, after countersignature on behalf of the Administration, will ordinarily be forwarded to the payees.

(2) An amount obligated under a contract for the construction or acquisition of a new vessel or vessels or for the liquidation of existing or subsequently incurred purchase-money indebtedness, whether the obligor has the entire or a partial interest therein within the scope of section 511 of the Act, may not, so long as the contract or indebtedness continues in full force and effect, be withdrawn except to meet payments due or to become due under such contract or for such liquidation.

(b) *Other withdrawals.* Checks, drafts, or other instruments of withdrawal executed by the taxpayer for purposes other than to meet obligations under a contract for the construction or acquisition of a new vessel or vessels or for the liquidation of existing or subsequently incurred purchase-money indebtedness, whether the taxpayer has the entire or a partial interest therein, shall be drawn by the taxpayer to its own order and forwarded to the Administration in Washington, D.C., with appropriate explanation of the purpose of the proposed withdrawal. Such withdrawals may occur by reason of a determination by the Administration that the taxpayer is not entitled to the benefits of section 511 of the Act (see § 287.5), or that a particular deposit has been improperly made (see § 287.13), or by reason of the election of the taxpayer to make such withdrawals. Upon receipt of such checks, drafts, or other instruments of withdrawal, the Administration will give notice thereof to the Commissioner of Internal Revenue. The Commissioner will advise the Administration of the receipt of the notice and the date it was received. The Administration shall not countersign such checks, drafts, or other instruments of withdrawal or transmit them to the taxpayer until the expiration of 30 days from the date of receipt of the notice by the Commissioner, unless the Commissioner or such official of the Internal Revenue Service as he may designate for the purpose consents in writing to earlier countersignature by the Administration and transmittal to the taxpayer. Upon the expiration of such 30-day period, or prior thereto if the aforesaid consent of the Commissioner has been obtained, the Administration will countersign the check, draft, or other instrument of withdrawal and forward it to the taxpayer.

(c) *Inapplicability to certain transactions.* The provisions of this section shall not be applicable to transactions deemed to be withdrawals by reason of the sale of securities held in the fund for an amount less than the market value thereof at the time of their deposit (see § 287.23), nor to the cancellation of an irrevocable commitment deposited in the fund, upon proof satisfactory to the Administration that the terms of such commitment have been fully satisfied.

§ 287.11 Time deposits.

Deposits in the construction reserve fund not invested in securities may be placed in time deposits when, in the judgment of the taxpayer, it is desirable and feasible so to do. The taxpayer shall promptly advise the Administration of any time deposit arrangements made with the depository. The Administration reserves the right at any time to require the termination or modification of any such arrangements. With prior approval of the Administration a time deposit may be made in a depository other than the one with which the construction reserve fund is established.

§ 287.12 Election as to nonrecognition of gain.

(a) *Election requirements.* As a prerequisite to the nonrecognition of gain on the sale or loss of a vessel (or of a part interest therein) for Federal income tax purposes, the taxpayer, after establishing a construction reserve fund, must make an election with respect to such vessel or interest in the manner set forth in this paragraph.

(1) *In general.* Except as provided in paragraph (a)(2) of this section, the election must be made in the taxpayer's Federal income tax return (or, in the case of a partnership, in the partnership return of income) for the taxable year in which the gain with re-

spect to the sale or loss of the vessel is realized. The election as to the nonrecognition of gain shall be shown by a statement to that effect, submitted as a part of, and attached to, the return. The statement, which need not be on any prescribed form, shall set forth a computation of the amount of the realized gain, the identity of the vessel, the nature and extent of the taxpayer's interest therein, whether such vessel was sold or lost and the date of sale or loss, the full sale price or full amount of indemnity, and the amount and date of each payment thereof, the basis of tax purposes and any other data affecting the determination of the realized gain.

(2) *Certain Government payments.* In case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, the taxpayer shall make his election by filing notice thereof with the Commissioner of Internal Revenue, Washington, DC, 20224, prior to the expiration of 60 days after receipt of the payment or indemnity. The taxpayer shall file a copy of the notice with the Secretary, Maritime Administration, Washington, DC, 20590. The form of the notice of election shall be prepared by the taxpayer and shall be substantially as follows:

ELECTION RELATIVE TO NONRECOGNITION OF GAIN UNDER SECTION 511 (c)(2), MERCHANT MARINE ACT, 1936

Pursuant to the provisions of section 511(c)(2) of the Merchant Marine Act, 1936, as amended, notice is hereby given that the undersigned taxpayer elects that gain in respect of the sale to the United States, or indemnification received from the United States on account of the loss, of the vessel named below or share therein shall not be recognized. The circumstances involved in the computation of such gain are as follows:

Name and other identification of vessel ——

____

Nature and extent of the taxpayer's interest in the vessel ______________________

____

Nature of disposition, i.e., sale or loss________

____

Date of disposition ______________

____

Full sale price or full amount of indemnity received by taxpayer ______________

____

Amount and date of each payment of sale price or indemnity received by taxpayer —

____

Amount and date of each previous deposit of such payments in construction reserve fund —______________________

____

Identification of each check or other instrument by which payment made to taxpayer

____

Tax basis of taxpayer's interest in vessel ——

____

Any other data affecting the determination of the realized gain ______________

____

Amount of gain (submit computation) ——

____

____
(Name of taxpayer)

By______________________

(Date of execution) ______________

§ 287.13 Deposit of proceeds of sales or indemnities.

(a) *Manner of deposit.* The deposit required by section 511 of the Act must be made in a construction reserve fund established with a depository or depositories approved by the Administration and subject to the joint control of the Administration and the taxpayer. It is not necessary to establish a separate fund with respect to each vessel or share in a vessel sold or lost.

(b) *Amount of deposit.* With respect to any vessel sold or lost, or a share therein, the deposit must be in an amount equal to the "net proceeds" of the sale, or the "net indemnity" for the loss. By "net proceeds" and "net indemnity" is meant (1) the depositor's interest in the adjusted basis of the vessel plus (2) the amount of gain which would be recognized for tax purposes in the absence of section 511 of the Act. In determining "net proceeds", the amount necessarily paid or incurred for brokers' commissions is to be deducted from the gross amount of the sales price. In the event the taxpayer is an affiliate or associate of the buyer, the amount of the sales price shall not exceed the fair market value of the vessel or vessels sold as determined by the Administration. In such case the taxpayer shall furnish evidence sufficient, in the opinion of the Administration, to establish that the sales price is not in excess of the fair market value. In determining "net indemnity", the amount necessarily paid or incurred purely for collection, or rate of exchange discounts on the payment, of the indemnity is to be deducted from the gross amount of collectible indemnity. In case of the sale or loss of several vessels or share therein, a deposit of the "net proceeds" or "net indemnity" with respect to one or more of the vessels or shares is permissible. Where several vessels or shares are sold for a lump sum, the "net proceeds" allocated to each vessel or share shall be determined in accordance with any reasonable rule satisfactory to the Commissioner of Internal Revenue. The taxpayer must deposit the full amount of each payment (including cash, notes, or other evidences of indebtedness) as a single deposit in the construction reserve fund. A payment divided between two or more depositories will be regarded as a single deposit. Amounts received by the taxpayer prior to the date of consummation of the sale of the vessel shall be considered as having been received by the taxpayer at the time the sale is consummated.

(c) *Purchase-money obligations.* Where the proceeds from the sale of a vessel include purchase-money obligations, such obligations together with the entire collateral therefor, or, in the case of deposit of the proceeds of a share in the vessel, a proportionate part of the obligations and collateral as determined by the Administration, shall be deposited, with the remainder of the proceeds, in the construction reserve fund as a part of the "net proceeds". The depository shall receive payment of all amounts due on such purchase-money obligations and such amounts shall be placed in the fund in substitution for the portion of the obligations paid. All installments of purchase-money obligations shall be paid directly into the fund by the obligor. In the event any such installment is not so deposited, the Administration, at any time after the due date, may require the taxpayer to deposit an amount equal to such installment. If the taxpayer so desires, he may deposit in the construction reserve fund cash or approved securities in an amount equal to the face value of any purchase-money obligations in lieu of depositing such obligations.

(d) *Vessel subject to mortgage at time of sale or loss.* Where a vessel is subject to a mortgage or other encumbrance at the time of its sale or loss and the taxpayer actually receives only an amount representing the equity therein or a share in such equity corresponding to his share in the vessel, he shall deposit in the construction reserve fund such amount and concurrently therewith other funds in an amount equal to the difference between the amount received and the "net proceeds" or "net indemnity". Such other funds may be in the form of cash, or, subject to the approval of the Administration, (1) interest-bearing securities, or (2) an irrevocable and unconditional commitment to finance the construction or acquisition of a new vessel in whole or in part by an obligor approved by the Administration in an amount equal to the amount by which the "net proceeds" exceed the cash or securities deposited in the fund.

(e) *Unauthorized deposits.* A deposit which is not provided for by section 511 of the Act shall, without unreasonable delay, be withdrawn from the fund and tax liability will be determined as though such deposit had not been made. (See §§ 287.10 and 287.24)

§ 287.14 Deposit of earnings and receipts.

(a) *Earnings.* A citizen may deposit all or any part of earnings derived from the operation, within the scope of § 287.3, of a vessel or vessels owned either by himself or any other person, if such earnings are intended for construction or acquisition of new vessels. Such earnings may include payments received by an owner, as compensation for use of his vessel, from other persons by whom it is so operated. Earnings from other sources may not be deposited. The earnings from operation of vessels which are eligible for deposit are the net earnings determined without regard to any deduction for depreciation, obsolescence, or amortization with respect to such vessels.

(b) *Receipts.* Receipts from deposited funds, in the form of interest or otherwise, may be deposited.

§ 287.15 Time for making deposits.

(a) *Proceeds of sale or indemnification.* Deposits of amounts representing proceeds of the sale or indemnification for loss of a vessel or share therein must be made within 60 days after receipt by the taxpayer.

(b) *Earnings and receipts.* Earnings and receipts for the taxable year may be deposited at any time. (See § 287.14.)

§ 287.16 Tax liability as to earnings deposited.

Deposit in the construction reserve fund of earnings from the operation of a vessel or vessels, or receipts, in the form of interest or otherwise, with respect to amounts previously deposited does not exempt the taxpayer from tax liability with respect thereto nor postpone the time such earnings or receipts are includible in gross income. Earnings and receipts deposited in a construction reserve fund established in accordance with the provisions of section 511 of the Act and the regulations in this part will be deemed to have been accumulated for the reasonable needs of the business within the meaning of part 1 (section 531 and following), Subchapter G, Chapter 1 of the Internal Revenue Code of 1954, so long as the requirements of section 511 of the Act and the regulations in this part are satisfied relative to the use of the fund in the construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels. For incurrence of tax liability due to noncompliance with the requirements of section 511 of the Act and the regulations in this part with respect to deposits in the construction reserve fund, see the provisions of § 287.23.

§ 287.17 Basis of new vessel.

The basis for determining gain or loss and for depreciation for the purpose of the Federal income tax with respect to a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in section 511(g) of the Act, with funds deposited in the construction reserve fund, is reduced by the amount of the unrecognized gain represented in the funds allocated under the provisions of the regulations in this part to the cost of such vessel. (See § 287.18.)

§ 287.18 Allocation of gain for tax purposes.

(a) *General rules of allocation.* As provided in § 287.17, if amounts on deposit in a construction reserve fund are expended, obligated, or withdrawn for construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness of such vessels, the portion thereof which represents gain shall be applied in reduction of the basis of such new vessels. The rules set forth below in this paragraph shall apply in allocating the unrecognized gain to the amounts so expended, obligated, or withdrawn:

(1) If the "net proceeds" of a sale or "net indemnity" in respect of a loss are deposited in more than one deposit, the portion thereof representing unrecognized gain shall be considered as having been deposited first.

(2) Amounts expended, obligated, or withdrawn from the construction reserve fund shall be applied against amounts deposited in the order of deposit.

(3) If any deposit consists in part of gain not recognized under section 511(c) of the Act, then any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the same proportion that the part of the deposit which constitutes gain bears to the total amount of the deposit.

(b) *Date of obligation.* The date funds are obligated under a contract for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels, rather than the date of payment from the fund, will determine the order of application against the deposits in the fund. When a contract for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels is entered into, amounts on deposit in the construction reserve fund will be deemed to be obligated to the extent of the amount of the taxpayer's liability under the contract. Deposits will be deemed to be so obligated in the order of deposit, each new contract obligating the earliest deposit not previously expended, obligated, or withdrawn. If the liability under the contract exceeds the amount in the construction reserve fund, the contract will be deemed to obligate, to the extent of that part of such excess not otherwise satisfied, the earliest deposit or deposits thereafter made.

(c) *Illustration.* The foregoing rules are illustrated in the following example:

Example. (1) A taxpayer who makes his returns on the calendar year basis sells a vessel in 1963 for $1,000,000, realizing a gain of $400,000. Payment of $100,000 is received in March 1963 when the contract is signed, and the balance of $900,000 is received in June 1963 on delivery of the vessel. The $1,000,000 is deposited in a construction reserve fund in July 1963. In December 1963, the taxpayer also deposits $150,000, representing earnings of that year. In 1964, he sells another vessel for $1,000,000, realizing a gain of $250,000. The sale price of $1,000,000 is received on delivery of the vessel in February 1964, and deposited in the construction reserve fund in March 1964. In September 1964, the taxpayer purchases for cash out of the construction reserve fund a new vessel for $1,750,000. To the cost of this vessel must be allocated the 1963 deposits of $1,150,000 and $600,000 of the March 1964 deposit. This leaves in the fund $400,000 of the March 1964 deposit. The amount of the unrecognized gain to be applied against the basis of the new vessel is $550,000, computed as follows: Gain of $400,000 represented in the 1963 deposits, plus the same proportion of the $250,000 gain represented in the March 1964 deposit ($1,000,000) which the amount ($600,000) allocated to the vessel is of the amount of th deposit, i.e., $400,000 plus 600,000/1,000,00 of $250,000 or $150,000, a total of $550,00 This reduces the basis of the new vessel t $1,200,000 ($1,750,000 less $550,000).

(2) In 1965, the taxpayer sells a thir vessel for $3,000,000, realizing a gain o $900,000. The $3,000,000 is received and deposited in the construction reserve fund i June 1965, making a total in the fund o $3,400,000. In December 1965, the taxpaye contracts for the construction of a secon new vessel to cost a maximum of $3,200,00 thereby obligating that amount of the fun and in June 1966, receives permission t withdraw the unobligated balance amounting to $200,000. To the cost of the secon new vessel must be allocated the $400,00 balance of the March 1964 deposit an $2,800,000 of the June 1965 deposit. The unrecognized gain to be applied against th basis of such new vessel is that proportio of the gain represented in each depo which the portion of the deposit allocate to the vessel bears to the amount of su deposit, i.e., 400,000/1,000,000 of $250,00 o $100,000 plus 2,800,000/3,000,000 o $900,000, or $840,000 making a total o $940,000. The $200,000 withdrawal is applie against the June 1965 deposit and the portion thereof which represents gain will b recognized as income for 1965, the year i which realized. The computation of the recognized gain is as follows: 200,000/3,000,0 of $900,000, or $60,000.

§ 287.19 Requirements as to new vessel

(a) *Requirements.* For the purpos of section 511 of the Act and the regulations in this part, the new vess must be—

(1) Documented under the laws o the United States when it is acquir by the taxpayer, or the taxpayer mu agree that when acquired it will b documented under the laws of th United States;

(2)(i) Constructed in the Unit States after December 31, 1939, or (i its construction has been financ under Title V or Title VII of the A or (iii) its construction has been aid by a mortgage insured under Title X of the Act; and

(3) Either (i) of such type, size, a speed as the Administration dete mines to be suitable for use on t high seas or Great Lakes in carry out the purposes of the Act, but of n less than 2,000 gross tons or of l speed than 12 knots, except that a p

ticular vessel may be of lesser tonnage or speed if the Administration determines and certifies that the particular vessel is desirable for use by the United States in case of war or national emergency, or (ii) constructed to replace a vessel or vessels requisitioned or purchased by the United States, in which event it must be of such type, size, and speed as to constitute a suitable replacement for the vessel requisitioned or purchased, but if a vessel already built is acquired to replace a vessel or vessels requisitioned or purchased by the United States, such vessel must meet the requirements set forth in paragraph (a)(3)(i) of this section. Ordinarily, under paragraph (a)(3)(i) of this section, a vessel constructed more than five years before the date on which deposits in a construction reserve fund are to be expended or obligated for acquisition of such vessel will not be considered suitable for use in carrying out the purpose of the Act, except that the five-year age limitation provided above in this sentence shall not apply to a vessel to be reconstructed before being placed in operation by the taxpayer.

(b) *Time of construction.* A vessel will be deemed to be constructed after December 31, 1939, only if construction was commenced after that date. Subject to the provisions of this section, a new vessel may be newly built for the taxpayer, or may be acquired after it is built.

(c) *Replacement of vessels.* It is not necessary that vessels shall be replaced vessels for vessel. The new vessels may be more or less in number than the replaced vessels, provided the other requirements of this section are met.

§ 287.20 Obligation of deposits.

(a) *Time for obligation.* Within three years from the date of any deposit in a construction reserve fund, unless extension is granted as provided in § 287.22, such deposit must be obligated under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Administration for a share therein), with not less than 12½ percent of the construction or contract price of the entire vessel or vessels actually paid or irrevocably committed on account thereof or must be expended or obligated for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels. Amounts on deposit in a construction reserve fund will be deemed to be obligated for expenditure when a binding contract of construction or acquisition has been entered into or when purchase-money indebtedness has been incurred and, if obligated under a contract of construction or acquisition, will be deemed to be irrevocably committed when due and payable in accordance with the terms of the contract of construction or acquisition.

(b) *Requirements for obligation.* Unless otherwise authorized by the Administration, contracts for the construction of new vessels must be for a fixed price, or provide for a base price that may be adjusted for changes in labor and material costs not exceeding 15 percent of the base price. The fixed or base price, as the case may be, shall be fair and reasonable as determined by the Maritime Administration. Any financial or other interests between the taxpayer and the contractor shall be disclosed to the Administration by the taxpayer. Plans and specifications for the new vessel or vessels must be approved by the Administration to the extent it deems necessary. A deposit in a construction reserve fund may be expended or obligated for expenditure for procurement under an acquisition or construction contract of a part interest in a new vessel or vessels only after obtaining the written consent of the Administration. The granting of such consent shall be entirely in the discretion of the Administration and it may impose such conditions with respect thereto as it may deem necessary or advisable for the purpose of carrying out the provisions of section 511 of the Act. Applications for such consent shall be executed in triplicate, and, together with eight conformed copies thereof, filed with the Administration.

§ 287.21 Period for construction of certain vessels.

A new vessel constructed otherwise than under the provisions of Title V of the Act, and not purchased from the Administration must, within six months from the date of the construction contract, or within the period of any extension, be completed to the extent of not less than 5 percent as estimated by the Administration and certified by it to the Secretary of the Treasury. In case of a contract covering more than one vessel it will be sufficient if one of the vessels is 5 percent completed within the six months' period from the date of the contract or within the period of any extension, and so certified. All construction must be completed with reasonable dispatch as determined by the Administration. If, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, the Administration will so certify to the Secretary of the Treasury. For the effect of such certification, see § 287.23.

§ 287.22 Time extensions for expenditure or obligation.

(a) *Extensions.* The Administration, upon application and a showing of proper circumstances, (1) may allow an extension of time within which deposits shall be expended or obligated, not to exceed one year, and upon a second application received before the expiration of the first extension, may allow an additional extension not to exceed one year, and (2) may allow an extension or extensions of time within which five percent of the construction shall have been completed as provided in § 287.21 not to exceed one year in the aggregate, and (3) may allow any other extensions that may be provided by amendment to the Act.

(b) *Application required.* A taxpayer seeking an extension of time shall make application therefor, and transmit it with an appropriate statement of the circumstances, including the reasons justifying the requested extension or extensions, and appropriate documents in substantiation of the statement, to the Administration. The Administration will notify the Commissioner of Internal Revenue of any extension granted. In case an application for extension is denied, the taxpayer will be liable for delay as though no application had been made.

§ 287.23 Noncompliance with requirements.

(a) *Noncompliance.* The amount of the gain which is that portion of the construction reserve fund otherwise constituting taxable income under the law applicable to the taxable year in which such gain was realized shall be included in the taxpayer's gross income for such taxable year for income or excess-profits tax purposes, if:

(1) A portion of such fund is withdrawn for purposes other than—

(i) The construction, reconstruction, reconditioning, or acquisition of a new vessel; or

(ii) The liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels; or

(2) The taxpayer fails to comply with the requirements of section 511 of the Act or the regulations in this part relating to the utilization of construction reserve funds in the construction, reconstruction, reconditioning, or acquisition of a new vessel, or the liquidation of purchase-money indebtedness on such a vessel.

If securities on deposit in a construction reserve fund are sold and the amount placed in the fund in lieu thereof is less than the value of the securities at the time of their deposit, the difference between such market value and the amount placed in the fund in lieu of the securities will be deemed to have been withdrawn. With respect to the substitution of new financing in the case of an irrevocable commitment, see paragraph (d) of § 287.13.

(b) *Amount recognized.* In the event of noncompliance with the prescribed conditions relative to any contract for construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels, recognition will extend to the entire amount of the gain represented in that portion of the construction reserve fund obligated under such contract. Thus, if the Administration determines and certifies to the Secretary of the Treasury that for causes within the control of the taxpayer construction under a contract is not completed with reasonable dispatch, the entire amount of the gain represented in the portion of the construction reserve fund obligated under the contract will be recognized even though all other conditions have been satisfied. In case of noncompliance with the requirements of section 511 of the Act or the regulations in this part, see the provisions of § 287.18 as to the allocation of gain.

(c) *Unreasonable accumulation.* Noncompliance with the provisions of section 511 of the Act or the regulations in this part relative to the utilization of the deposited amounts may also, inasmuch as the provision of section 511(f) of the Act is then inapplicable, warrant an examination to ascertain whether such amounts constitute an unreasonable accumulation of earnings and profits within the meaning of part I (section 531 and following), subchapter G, chapter 1 of the Internal Revenue Code of 1954, or corresponding provisions of prior law. If amounts are deposited and the fund maintained in good faith for the purpose of construction, reconstruction, reconditioning, and acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels, such amounts will be deemed to have been accumulated for the reasonable needs of the business.

§ 287.24 Extent of tax liability.

(a) *Declared value excess-profits tax.* Gain which is includible in gross income under § 287.23 shall be included in gross income for all income and excess-profits tax purposes, but not for the purposes of the declared value excess-profits tax and the capital stock tax as provided in section 511(i) of the Act. In lieu of any adjustment with respect to such declared value excess-profits tax, there is imposed for any taxable year ending on or before June 30, 1945, in which the gain is realized an additional tax of 1.1 percent of the amount of the gain. No additional capital stock tax liability is incurred.

(b) *Improper deposits.* In the case of deposits in the construction reserve fund of amounts derived from sources other than those specified in section 511 of the Act, or in the case of failure to deposit an amount equal to the "net proceeds" or "net indemnity" within the period prescribed in section 511(c) of the Act and § 287.15, the taxpayer obtains no suspension or postponement of any tax liability and the tax is collectible without regard to the provisions of section 511(c) of the Act.

(c) *Time for filing claim subsequent to election under section 511(c)(2).* If an election is made under section 511(c)(2) of the Act, and paragraph (a)(2) of § 287.12, and if computation or recomputation in accordance therewith is otherwise allowable but is prevented, on the date of filing of notice of such election, or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election. If as the result of such computation or recomputation an overpayment is disclosed, a claim for refund on Form 843 should also be filed within such six months' period.

§ 287.25 Assessment and collection of deficiencies.

Any additional tax, including the 1.1 percent amount imposed by section 511(i) of the Act, due on account of withdrawal from a construction reserve fund, or failure to comply with section 511 of the Act or the regulations in this part, is collectible as a deficiency. Interest upon such deficiency will run from the date the withdrawal or noncompliance occurs. The amount of any deficiency, including interest and additions to the tax, determined as a result of such withdrawal or noncompliance, may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time and without regard to any period of limitations or any other provisions of law or rule of law, including the doctrine of res judicata.

§ 287.26 Reports by taxpayers.

(a) *Information required.* With each income tax return filed for a taxable year during any part of which a construction reserve fund is in existence the taxpayer shall submit a statement setting forth a detailed analysis of such fund. The statement, which need not be on any prescribed form, shall include the following information with respect to the construction reserve fund:

(1) The actual balance in the fund at the beginning and end of the taxable year;

(2) The date, amount, and source of each deposit during the taxable year;

(3) If any deposit referred to in paragraph (a)(2) of this section consists of proceeds from the sale, or indemnification of loss, of a vessel or share thereof, the amounts of the unrecognized gain;

(4) The date, amount, and purpose of each expenditure or withdrawal from the fund; and

(5) The date and amount of each contract, under which deposited funds are deemed to be obligated during the taxable year, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels, and the identification of such vessels.

(b) *Records required.* Taxpayers shall keep such records and make such additional reports as the Commissioner of Internal Revenue or the Administration may require.

NOTE: The records referred to in this section shall be retained for a period of six months beyond the termination or closing out of the reserve fund.

§ 287.27 Controlled corporation.

For the purpose of section 511 of the Act and the regulations in this part a new vessel is considered as constructed, reconstructed, reconditioned, or acquired by the taxpayer if constructed, reconstructed, reconditioned, or acquired by a corporation at a time when the taxpayer owns not less than 95 percent of the total number of shares of each class of stock of the corporation.

§ 287.28 Administrative jurisdiction.

Sections 287.3 to 287.11, inclusive, §§ 287.13 to 187.15, inclusive, and §§ 287.19 to 287.22, inclusive, deal primarily with matters under the jurisdiction of the Administration. Sections 287.12, 287.16 to 287.18, inclusive, and §§ 287.23 to 287.27, inclusive, deal primarily with matters under the jurisdiction of the Commissioner of Internal Revenue. Generally, matters relating to the establishment, maintenance, expenditure, and use of construction reserve funds and the construction, reconstruction, reconditioning, or acquisition of new vessels are under the jurisdiction of the Administration; and matters relating to the determination, assessment, and collection of taxes are under the jurisdiction of the Commissioner of Internal Revenue. Correspondence should be addressed to the particular authority having jurisdiction in the matter.

PART 289—INSURANCE OF CONSTRUCTION-DIFFERENTIAL SUBSIDY VESSELS, OPERATING-DIFFERENTIAL SUBSIDY VESSELS AND OF VESSELS SOLD OR ADJUSTED UNDER THE MERCHANT SHIP SALES ACT 1946

Sec.
289.1 Definition.
289.2 Vessels included.
289.3 Provision in subsidy agreements and mortgages.
289.4 Insurance by owners.
289.5 Insurance by the United States.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 12, 60 Stat. 49, as amended; 50 U.S.C. App. 1745.

SOURCE: General Order 67 Rev., 18 FR 230, Jan. 10, 1953, unless otherwise noted.

§ 289.1 Definition.

For the purpose of this part, when reference is made to the phrase "interest of the United States", it shall mean:

(a) As to vessels constructed or sold with construction-differential subsidy and/or national defense feature allowance under Title V or VII of the Merchant Marine Act, 1936, as amended, the value of the construction-differential subsidy allowance, plus the allowance for national defense features;

(b) As to vessels constructed or sold under Title V or VII of the Merchant Marine Act of 1936, as amended, and adjusted in price pursuant to section 9 of the Merchant Ship Sales Act of 1946, the difference between the prewar domestic cost and the statutory sales price as defined in the Merchant Ship Sales Act of 1946.

§ 289.2 Vessels included.

Vessels subject to the provisions of this part are:

(a) All vessels which may in the future be constructed or sold with construction-differential subsidy allowances and/or national defense features allowance under Title V or VII of the Merchant Marine Act 1936, as amended.

(b) All vessels which have previously been constructed or sold with construction-differential subsidy allowances and national defense features allowances under Title V or VII of the Merchant Marine Act, 1936, as amended;

(c) All vessels which have previously been constructed with construction-differential subsidy allowances or national defense features allowance under Title V or VII of the Merchant Marine Act of 1936, as amended, and later adjusted in price pursuant to section 9 of the Merchant Ship Sales Act of 1946;

(d) All vessels which are subsidized under operating-differential subsidy agreements.

§ 289.3 Provision in subsidy agreements and mortgages.

(a) All construction-differential subsidy agreements and mortgages relative to vessels covered in § 289.2(a) shall provide, wherever possible, that the Maritime Administrator may, in his discretion, require the owner to insure, with commercial underwriters, the interest of the United States.

(b) All future construction-differential subsidy agreements and future operating subsidy agreements shall require that owners insure vessels covered in § 289.2(a) and (d) in amounts acceptable to the Maritime Administration.

§ 289.4 Insurance by owners.

Owners of vessels covered in § 289.2 will not be required to arrange commercial insurance to cover the interest of the United States, exclusive of its mortgage interest, but the United States reserves the right to require, whenever the contracts so provide, that this be done at some future date, should it deem it necessary.

§ 289.5 Insurance by the United States.

The United States will self-insure its interest, exclusive of mortgage interest, as defined in § 289.1.

PART 290—FORMS

Sec.
290.1 Construction contract.
290.11 Operating-Differential Subsidy Agreement; Part II, General Provisions.

§ 290.1 Construction contract.

(a) The Maritime Subsidy Board on May 9, 1967, adopted the revised form of Construction Contract under Title V, Merchant Marine Act, 1936, as amended, to be identified as "Special Provisions, Contract No. MA/MSB—Contract for the Construction of MA Design ———— for ————" into which is incorporated "Maritime Subsidy Board, Department of Transportation Construction Contract Part II. General Provisions (Approved May 9, 1967)".

(b) Copies of the contract form, containing the said "Special Provisions and General Provisions," may be obtained by persons having a proper interest therein upon application to the Secretary, Maritime Subsidy Board, Washington, DC 20590.

NOTE: Copy of the contract was filed with the original of this document.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[32 FR 7174, May 12, 1967]

§ 290.11 Operating-Differential Subsidy Agreement; Part II, General Provisions.

(a) The Federal Maritime Board on July 29, 1957, and August 5, 1957, adopted a revised standard form of Operating-Differential Subsidy Agreement incorporating general provisions, effective as of January 1, 1958, to existing and future Operating-Differential Subsidy Agreements made under authority of Title VI of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1171).

(b) Copies of the Agreement, identified as Part II, General Provisions, Operating-Differential Subsidy Agreement, may be obtained by persons having a proper interest upon application to the Secretary, Federal Maritime Board, Washington, DC 20590.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[24 FR 55, Jan. 3, 1959, as amended at 33 FR 2944, Feb. 14, 1968]

PART 292—PROCEDURE TO BE FOLLOWED BY OPERATORS IN THE RENDITION TO THE MARITIME ADMINISTRATION OF ANNUAL AND FINAL ACCOUNTING UNDER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Sec.
292.1 Annual and final accountings by operators under operating-differential subsidy agreements; procedure.
292.2 Definitions.
292.3 Accounting requirements.
292.4 "Capital necessarily employed."
292.5 Net profit.
292.6 Statements required by the Administration.
292.7 Certifications and verifications.
292.8 Statement of purposes and reservations.
292.9 Applicability of procedure.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 74, 16 FR 6716, July 11, 1951, unless otherwise noted.

§ 292.1 Annual and final accountings by operators under operating-differential subsidy agreements; procedure.

Every holder of an operating-differential subsidy agreement executed with the Maritime Commission, the Federal Maritime Board or the Maritime Subsidy Board shall (a) within ninety (90) days after publication of this part in the FEDERAL REGISTER, prepare and submit to the Maritime Administration, in the form and manner prescribed in §§ 292.2 to 292.8, inclusive, a separate accounting of its operations for each accounting period commencing with the resumption or commencement of its subsidized operations on or after January 1, 1947, through December 31, 1950: *Provided*, That such accounting shall not be required with respect to any accounting period included in a terminated "recapture period" (as defined in § 291.5(f) of this chapter (General Order 71)) with respect to which all accrued operating-differential subsidy was recaptured or is recapturable by the Administration: *Provided further*, That upon application of the Operator the Administration may extend, for such further period as in its judgment is warranted by the circumstances in any instance, the time limit prescribed in this section for the submission of such accountings, and (b) within one hundred and eighty (180) days after termination of each subsequent accounting period (as defined in the said annexed procedure) prepare and submit to the Maritime Administration a similar accounting for such accounting period: *Provided, however*, That upon application of the Operator the Administration may extend, for such further period as in its judgment is warranted by the circumstances in any instance, the time limit prescribed in this section for the submission of such accountings.

[G.O. 74, 16 FR 6716, July 11, 1951, as amended at 33 FR 2944, Feb. 14, 1968]

§ 292.2 Definitions.

Except where the context clearly indicates otherwise, as used in this part:

(a) "Commission" or "Administration" refers to the United States of America acting by and through the Maritime Administration, as successor to the United States Maritime Commission.

(b) "Operator" refers to the holder of an Operating-Differential Subsidy

Agreement with the Federal Maritime Board or the Maritime Subsidy Board.

(c) "Agreement" refers to an Agreement providing for the payment of an operating-differential subsidy pursuant to Title VI or to section 708 of Title VII of the Merchant Marine Act, 1936, as amended. (References in this part to particular articles of the Agreement relate to such articles of Part II—General Provisions—of the standard form of Operating-Differential Subsidy Agreement adopted by the United States Maritime Commission on December 21, 1949.)

(d) "Uniform System of Accounts" refers to the "Uniform System of Accounts for Operating-Differential Subsidy Contractors" (1) prescribed by the United States Maritime Commission in General Order No. 22, January 1, 1938, as supplemented, with respect to accountings for periods through December 31, 1950, and (2) prescribed by the Maritime Administration in Part 282 of this chapter (General Order 22, revised October 16, 1950), with respect to accountings for periods commencing on or after January 1, 1951.

(e) "Accounting period" refers to the calendar year, or applicable portion thereof, with respect to which a separate determination of "capital necessarily employed in the business" is required to be made.

[G.O. 74, 16 FR 6716, July 11, 1951, as amended at 33 FR 2944, Feb. 14, 1968]

§ 292.3 Accounting requirements.

(a) *Contract provisions.* (1) Article II-24 of the Agreement provides, among other things, that there shall be a final accounting thereunder between the Operator and the Commission as soon as practicable after the end of each calendar year and upon termination of the Agreement (whether such termination shall occur by expiration of the stated period thereof or otherwise).

(2) Article II-20 of the Agreement provides, among other things, that:

(i) The Operator and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the Operator (*a*) shall keep its books, records, and accounts relating to the property and to the maintenance, operation, and servicing of the vessel(s), service(s), route(s), and line(s) covered by the Agreement in such form and under such rules and regulations as may be prescribed by the Commission, but the Commission shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; and (*b*) shall file, upon notice from the Commission, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, memoranda of any facts and transactions, as in the opinion of the Commission affect the financial results in, the performance of, or transactions or operations under, the Agreement. The Commission reserves the right to require that all or any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Commission.

(ii) The Commission is authorized to examine and audit the books, records, and accounts of all persons referred to above in this Article whenever it may deem it necessary or desirable, including but without limitation an analysis of the surplus and all supporting accounts. The Operator agrees that any and all auditors, inspectors, attorneys, and other employees designated by the Commission, shall have full, free and complete access at all reasonable times to all vessels owned by the Operator when in port or undergoing repairs and to all books, records, papers, memoranda or other documents of the Operator wherever located or of any holding company, subsidiary company or affiliated company of the Operator pertaining to any activities relating in any way to the vessel(s), service(s), route(s), or line(s) covered by the agreement, and further agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge adequate office space and other facilities reasonably required by such auditors, inspectors, attorneys and other employees in the performance of their duties.

(b) *Annual and final accountings.* Pursuant to the applicable provisions of the Agreement, the Administration hereby requires that each Operator submit a separate accounting of its operations for each accounting period commencing with the resumption or commencement of its subsidized operations on or after January 1, 1947, including, but not limited to, the Operator's determinations of:

(1) Profits in excess of ten percentum per annum on "capital necessarily employed" which are subject to recapture by the Administration;

(2) Requirements with respect to deposits in the statutory Capital and Special Reserve Funds of the Operator;

(3) The amount, if any, of unpaid subsidy accrued with respect to operations after December 31, 1946, during the then current recapture period in excess of any amount of the recapture accrual required by law to be withheld by the Administration;

(4) The amount, if any, of subsidy payments theretofore made to the Operator with respect to operations under the Agreement after December 31, 1946, during the then current recapture period (and not previously repaid) in excess of the sum by which the cumulative amount of subsidy then estimated to have accrued to the Operator on account of such operations is greater than any amount of the then estimated recapture accrual required by law to be withheld by the Administration;

Provided, That, such accounting shall not be required with respect to any accounting period included in a terminated "recapture period" (as defined in § 291.5(f) of this chapter (General Order 71 of the United States Maritime Commission)) with respect to which all accrued operating-differential subsidy was recaptured or is recapturable by the Administration.

The accounting comprising the statements prescribed in § 292.6 (Statements required by the Administration) shall be submitted in sextuplicate to the Administration through the local District Comptroller, or Area or Port Auditor in the district, area, or port in which the home office of the Operator is located, or (if there be no such Comptroller, or Auditor of the Administration in the district, area, or port in which the home office of the Operator is located) to the Comptroller, Maritime Administration, Washington, DC 20590. While it is preferable that the required statements be typewritten, completely legible original handwritten statements accompanied by five photostatic copies thereof (which likewise must be completely legible) will be acceptable.

(c) *Subsequent adjustments.* (1) At the time of the submission of the accounting for each accounting period as required under this part, the Operator shall determine whether adjustments during such period affecting any preceding accounting period or periods would, if carried back to such preceding period or periods, operate to increase or decrease to the extent of $10,000 or more, (i) the amount otherwise recapturable and/or (ii) the amount otherwise required to be deposited in the Special Reserve Fund and, if so, the Operator shall either (*a*) submit a revised accounting for such preceding accounting period or periods taking such adjustments into account or (*b*) include in the current accounting an adjustment of amounts recapturable and/or required to be deposited in the Special Reserve Fund with respect to such prior period or periods that will produce the same result as though a revised accounting were submitted for such prior period or periods: *Provided,* That, except as otherwise provided herein, adjustments applicable to a preceding accounting period shall be taken into account in the year in which recorded: *And provided further,* That, notwithstanding the foregoing, any subsidy payable must be calculated at the rates established for the voyages in which the subsidizable expense involved was incurred.

(2) If, in any instance, at the time of the submission of an accounting, no such adjustment affecting any preceding accounting period has occurred subsequent to the submission of the accounting for such period, the Operator shall submit to the Administration an appropriate certification to that effect over the signature of a duly authorized officer. The books, records, and accounts referred to in this

tion shall be retained in accordance with the provisions of § 380.24 of this chapter.

[G.O. 74, 16 FR 6716, July 11, 1951, as amended at 21 FR 9408, Dec. 1, 1956; 30 FR 12356, Sept. 28, 1965; 33 FR 2944, Feb. 14, 1968]

§ 292.4 "Capital necessarily employed."

(a) Article II-29 of the Agreement provides that, for the purposes thereof:

(1) "Capital necessarily employed in the business" and "capital investment necessarily employed in the operation of the subsidized vessel(s), service(s), route(s), and line(s)" shall, with respect to all annual or other accounting periods which terminated concurrently with or prior to the termination of the recapture period which was current on December 31, 1946, be determined as provided in the applicable rules and regulations as adopted and prescribed by the United States Maritime Commission in Part 286 of this chapter (General Order 31, as amended), exclusive, however, of the provisions of Part 291 of this chapter (General Order 71);

(2) With respect to all annual or other accounting periods terminating subsequent to the annual or other accounting periods mentioned in paragraph (e)(1) of this section and in the case of contracts taking effect on or after January 1, 1947, the provisions of Part 291 of this chapter (General Order 71, as amended from time to time), defining the terms "capital necessarily employed in the business" and "capital investment necessarily employed in the operation of the subsidized vessel(s), service(s), route(s), and line(s)", shall be controlling, and the provisions of Part 286 of this chapter (General Order 31, as amended from time to time), shall be applicable only to the extent that such provisions are consistent with the provisions of Part 291 of this chapter (General Order 71, as amended from time to time).

(b) Should any change be made in the provisions of the Agreement or in Part 291 of this chapter (General Order 71), with respect to the effective date of that part, this procedure will be deemed to be automatically modified to correspond with such change.

§ 292.5 Net profit.

Article II-29 of the Agreement provides that for the purposes thereof, "net earnings" or "net profit" shall be determined as provided in the applicable rules and regulations adopted and prescribed by the United States Maritime Commission in Part 286 of this chapter (General Order 31, as amended from time to time).

§ 292.6 Statements required by the Administration.

The Accountings required under this part, as referred to in paragraph (b) of § 292.3, shall include the following statements (Illustrative examples of such statements, based on hypothetical figures, will be suppled by the Comptroller. The Operator may change or vary the design of any of these statements: *Provided*, That the statements substituted will produce the same results and reflect all of the information required. *And provided further*, That no substantial change or variation in the design of such statements shall be made without the prior concurrence of the local District Comptroller, or Area or Port Auditor of the Administration or, if there be no such Comptroller or auditor of the Administration in the District, area, or port in which the home office of the Operator is located, then the request for such concurrence should be addressed to the Comptroller, Maritime Administration, Washington, DC 20590. These examples have been based on the Uniform System of Accounts prescribed by the United States Maritime Commission in General Order 22, January 1, 1938, as supplemented, and are, therefore, applicable to accountings for periods through December 31, 1950. With respect to accountings for subsequent periods, the statements should be conformed to the Uniform System of Accounts prescribed by the Maritime Administration in Part 282 of this chapter (General Order 22, Revised October 16, 1950)):

Exhibit A—Analysis of Adjusted Net Worth, Allocation of "Capital Necessarily Employed", and Distribution of "Net Earnings" for the Purposes of Applying the Reserve and Recapture Provisions of the Operating-Differential Subsidy Agreement, as Determined in Accordance with Part 286 of this Chapter (General Order 31) (for Period, if any, Prior to Effective Date of Part 291 of this Chapter (General Order 71))

The procedure for the preparation of this statement contemplates that "capital necessarily employed in the business", with respect to all annual or other accounting periods which terminated concurrently with or prior to the termination of the recapture period which was current on December 31, 1946, shall be determined as provided in the applicable rules and regulations as adopted and prescribed by the Commission in Part 286 of this chapter (General Order 31, as amended).

Exhibit A—Allocation of "Capital Necessarily Employed" and Distribution of "Net Earnings" for the Purposes of Applying the Reserve and Recapture Provisions of the Operating-Differential Subsidy Agreement, as Determined in Accordance with Part 291 of this Chapter (General Order 71 and Part 286 of this Chapter (General Order 31) (for Period After Effective Date of Part 291 of this Chapter (General Order 71))

The procedure for the preparation of this statement contemplates that "capital necessarily employed in the business", with respect to all annual or other accounting periods terminating subsequent to the termination of the recapture period which was current on December 31, 1946 and in instances of agreements taking effect on or after January 1, 1947, shall be determined as provided in Part 291 of this chapter (General Order 71, as amended from time to time).

Exhibit AA—Revised Analysis of Adjusted Net Worth, Allocation of "Capital Necessarily Employed", and Distribution of "Net Earnings" (for Preceding Year) for the Purposes of Applying the Reserve and Recapture Provisions of the Operating-Differential Subsidy Agreement, as Determined in Accordance with Part 286 of this Chapter (General Order 31) (for Period, if any, Prior to Effective Date of Part 291 of this Chapter (General Order 71))

The procedure for the preparation of this statement contemplates the revision of the statement for the preceding year simultaneously with the preparation of the current year's statement to give effect to subsequent adjustments.

Exhibit B—Comparative Balance Sheet

The procedure for the preparation of this statement contemplates:

1. That for each annual or other accounting period there shall be submitted in comparative form a balance sheet as at the end of the month immediately preceding the date of the beginning of such accounting period and as at the end of the last month within such accounting period;

2. That the accounts reflected in each such balance sheet shall be those prescribed in the Uniform System of Accounts and none other; and

3. That the assets reflected in each such balance sheet shall be stated in conformity with generally accepted accounting principles applied on a consistent basis; that adequate reserves shall be shown for accounts receivable doubtful of collection and for such other items as require valuation reserves to reflect their true value; and that there shall be included an adequate statement of all known and ascertainable liabilities.

Exhibit C—Income Sheet

The procedure for the preparation of this statement contemplates:

1. That there shall be submitted income sheets which accurately reflect the results of all operations for each applicable calendar year or other accounting period;

2. That the income and expenses reflected on such income sheets shall be allocated on the bases prescribed in Part 286 of this chapter (General Order 31);

3. That the items of income and expense reflected in each such income sheet shall be those prescribed in the Uniform System of Accounts and none other; and

4. That such income sheets shall include, with respect to each applicable calendar year or other accounting period, distribution of any "additional charter hire" accrued to the Administration in instances where the operations of the Operator include vessels chartered from the Commission under bareboat charters entered into pursuant to Title VII of the Merchant Marine Act, 1936, as amended, or Section 5 of the Merchant Ship Sales Act of 1946, or under the form of agreement known as "Warshipdemiseout 203".

Exhibit D—Statement of Operating-Differential Subsidy Accrued During the Period

There shall be submitted for each calendar year or other accounting period with respect to which a separate income sheet is required hereunder a statement reflecting the accrual of operating-differential subsidy (in such detail as is reflected in the illustrative example included among those to be supplied by the Comptroller): *Provided*, That, until final operating-differential subsidy rates are established, the submission of this statement may be postponed upon the understanding that when, at that time, revised accountings are submitted they will be accompanied by this statement.

EXHIBIT E—WORKING TRIAL BALANCE

The procedure for the preparation of this statement contemplates:

1. That there shall be prepared a working trial balance as at each date with respect to which a separate balance sheet is required hereunder;

2. That the balances reflected in the general ledger at the respective dates shall be listed by accounts and distributed to the appropriate columns provided therefor in the illustrative example included among those to be supplied by the Comptroller;

3. That the Operator shall determine that all items included in each asset and liability account have been properly classified and adjusted, that the balances are correct, and do not contain items of income or expense applicable to either a prior or current accounting period (Schedules reflecting the extent of the analysis of such accounts shall be included among the working papers available for examination by the Administration's auditors);

4. That the Operator shall determine that the items included in each income and expense account have been properly calssified and adjusted, that the balances are correct and that such balances are entirely applicable to the accounting period involved (Schedules reflecting the extent of the analysis of such accounts shall be included among the working papers available for examination by the Administration's auditors);

5. That the Operator shall determine that proper accounting disposition has been made of the balance in each clearance account; and

6. That all adjustments to the accounts listed in the working trail balance shall be accomplished by posting thereto journal entries, prepared in numerical sequence and containing a complete description as to the reasons for the adjustment, copies of such journal entries to be made available to the Administration upon request.

SCHEDULES A-1 THROUGH A-8—SUPPORTING DETAILS OF "CAPITAL NECESSARILY EMPLOYED"

These schedules (as illustrated in the examples included among those to be supplied by the Comptroller) shall reflect the detailed calculation in support of each item distributed as "capital necessarily employed" on Exhibit A—Allocation of "Capital Necessarily Employed" and Distribution of "Net Earnings" for the Purposes of Applying the Reserve and Recapture Provisions of the Operating-Differential Subsidy Agreement, as Determined in Accordance with Part 291 of this chapter (General Order 71) and Part 286 of this chapter (General Order 31).

SCHEDULE B-1—ANALYSIS OF SURPLUS

The procedure for the preparation of this statement contemplates:

1. That there shall be submitted an analysis of surplus in support of each balance sheet required hereunder; and

2. That such analysis, in support of the beginning balance sheet, shall reflect

(i) Surplus as per books and general financial statements (as submitted by the Operator to the Administration) at the end of the year preceding the resumption of subsidized operations of the Operator;

(ii) Net profit (or loss) during the ensuing calendar year;

(iii) Direct adjustments to surplus during such period; and

(iv) The balance as at the end of such period.

SCHEDULE B-1-a—REVISED ANALYSIS OF SURPLUS (FOR PRECEDING YEAR)

The procedure for the preparation of this statement contemplates the revision of the statement for the preceding year simultaneously with the preparation of the current year's statement to give effect to subsequent adjustments, if a revised accounting is required pursuant to paragraph (c)(1) of § 292.3.

SCHEDULE C-1—ANALYSIS OF PROFIT AND LOSS

The procedure for the preparation of this statement contemplates:

1. That there shall be submitted in support of each working trial balance required hereunder an analysis of profit and loss for the calendar year or other accounting period involved and that such analysis shall be grouped by accounts in the manner indicated in the illustrative example included among those to be supplied by the Comptroller;

2. That such analysis shall include all adjustments effected by the Operator and, as part of the working trial balance, shall be the basis upon which the Income Sheet (Exhibit C) is prepared; and

3. That all items of income and expense reflected in the analysis of profit and loss shall be those prescribed in the Uniform System of Accounts and none other.

SCHEDULE D-1—REVISED STATEMENT OF OPERATING-DIFFERENTIAL SUBSIDY ACCRUED (FOR PRECEDING CALENDAR YEAR REFLECTING ADJUSTMENTS EFFECTED DURING THE CURRENT CALENDAR YEAR)

The procedure for the preparation of this statement contemplates the revision of the statement for the preceding year simultaneously with the preparation of the current year's statement to give effect to subsequent adjustments.

APPENDIX A—STATUTORY RESERVE FUND REQUIREMENTS AND DEPOSITS WITH RESPECT THERETO

The procedure for the preparation of this statement contemplates that it will reflect cumulatively, as at the end of each accounting period, the amounts required by statute to be deposited in the Operator's statutory reserve funds or voluntarily deposited therein by the Operator upon authorization of the Administration and the dates on which the deposits so required or authorized were actually made into the statutory reserve funds. In the statement for the first accounting period with respect to which an accounting is required to be submitted hereunder, the totals as at the end of the month during which the last subsidized voyage terminated preceding suspension of subsidized operations due to World War II may be brought forward and the detail may be limited to requirements, authorizations, and deposits for the succeeding period through the end of the particular accounting period with respect to which such statement is submitted. In statements for subsequent accounting periods, the totals as at the end of the preceding accounting period may be brought forward and the detail may be limited to requirements, authorizations, and deposits for the particular accounting period with respect to which such statement is submitted.

§ 292.7 Certifications and verifications.

(a) The accounting required under this part shall be submitted under cover of an affidavit, executed by the corporate officer responsible for the accuracy and maintenance of the books of account and financial records of the Operator, if a corporation, or by a general partner so responsible if a partnership, which affidavit shall be substantially as follows:

AFFIDAVIT

STATE OF ————
County of ————, *ss:*
————, being first duly sworn on his [her] oath, states:
That I am ———— (Title) of the ————
————————
(Name of operator)

Operator, holder of an Operating-Differential Subsidy Agreement dated ———— with the Maritime Subsidy Board or the former Federal Maritime Board; that, as such, I am responsible for the accuracy and maintenance of the books of account and financial records of the Operator and am thoroughly familiar with such books and records and with the terms and conditions of the aforesaid agreement and with the orders, rules, regulations, and instructions appertaining thereto as issued or adopted by the Maritime Administration; that I have carefully examined the statements comprising the accounting annexed hereto covering the period from ———— to ————, under the aforesaid agreement; that, to the best of my knowledge and belief, the said accounting reflects a true and complete statement of the "capital necessarily employed in the business" of the subsidized vessels and services incident thereto, the amounts of the deposits required to be made in the Capital Reserve Fund, and in the Special Reserve Fund, and the amount of excess profits subject to recapture by the Maritime Administration, pursuant to the provisions of the aforesaid agreement, during the period from ———— to ————, under the terms and conditions thereof and in accordance with the orders, rules, regulations, and instructions issued or adopted by the Maritime Administration appertaining thereto; that the balance sheets included in the annexed accounting fairly present the financial position of the Operator as at the dates thereof, including (but not limited to) an adequate statement of all known and ascertainable liabilities, and the income sheet included in the annexed accounting correctly states the operating results of the Operator for the period covered by such accounting; and that the Operator, to the best of my knowledge and belief, has fully complied with all of the terms and conditions of said operating-differential subsidy agreement in the manner and at the times therein required.

————————.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ———— day of ————, 195—.

My commission expires ————

————————
Notary Public

(b) Pursuant to the right reserved unto it under Article II-20 of the Agreement, the Administration hereby requires that, commencing with those for the calendar year 1950, all of the statements comprising the accountings required under this part shall be certified by independent certified public accountants and that:

(1) Such certified public accountants must be independent in fact (An accountant will not be considered independent with respect to any person in whom he has any substantial interest, direct or indirect, or with whom he is, or was during the period of the Agreement involved, connected as an officer, director, executive, or employee. As used in this subparagraph, the term "any person" shall include the Operator, and any holding company, subsidiary, affiliate, or associate of the Operator);

(2) Such certified public accountants must undertake to make their working papers available (in the offices of the Operator) for examination by the Administration's auditors upon request and to permit the Administration's auditors to make copies of such papers to the extent they deem necessary; and

(3) The statements submitted must be accompanied, in addition to the affidavit required of the Operator, by a signed opinion of the independent certified public accountant in the following or substantially similar form:

> We [I] have examined the statements comprising the accounting annexed hereto, and have found the statements to have been prepared by the Operator in accordance with the terms and conditions of the Operating-Differential Subsidy Agreement, dated ———, and with the applicable orders, rules, regulations, and instructions issued or adopted by the Maritime Administration. Our [my] examination of the statements included examination of the underlying books of account and records for the period from ——— to ———.
>
> Our [my] examination was made in accordance with generally accepted auditing standards and included all procedures which we [I] considered necessary in the circumstances [state exceptions if any]. In our [my] opinion the annexed statements fairly present the proper determinations of the "capital necessarily employed in the business" of the subsidized vessels and services incident thereto, the amounts of the deposits required to be made in the Capital Reserve Fund and in the Special Reserve Fund, and the amount of excess profits subject to recapture by the Maritime Administration, pursuant to the provisions of the Operating-Differential Subsidy Agreement for the period from ——— to ———.
>
> ———————————
>
> (Independent Certified Public Accountant [s])

Upon receipt of statements certified by an independent certified public accountant or a firm of independent certified public accountants under the conditions prescribed in this paragraph (b) (whether for the periods commencing with the calendar year 1950, as required, or for periods prior thereto, as the Operator may elect) the Administration will take into consideration the scope of the audit conducted by such independent certified public accountants of the Operator's accounts.

[G.O. 74, 16 FR 6716, July 11, 1951, as amended at 33 FR 2944, Feb. 14, 1968]

§ 292.8 Statement of purposes and reservations.

(a) The purpose of the procedure in this part is to establish the means for uniform application to expedite and facilitate the rendition by operators to the Administration of annual and final accountings under an Operating-Differential Subsidy Agreement.

(b) The receipt and consideration of such accountings by the Administration shall be subject to the following reservations:

(1) That all working papers (irrespective of by whom prepared) in support of the various statements comprising such accountings, shall be available for examination by the Administration's auditors upon request and that the Administration's auditors shall be permitted to make copies of such papers to the extent they deem necessary;

(2) That the Administration reserves the right to conduct such audits, examinations, or checks of the Operators' accounts as it may deem necessary before approving the accounting involved;

(3) That the examples to be supplied by the Comptroller of the statements required by the Administration are for illustrative purposes only and are based on hypothetical figures; that no implications should be drawn from the relative magnitude of the figures used in these examples; and that if, in any instance, an example should conflict

with the text of the procedure in this part, the latter shall govern;

(4) That the establishment of the procedure in this part (including the illustrative examples referred to therein) is without prejudice to the right of the Administration to determine upon the employment of other bases for allocation and calculation in any instance where, upon the completion of any annual or final accounting, the application of the bases prescribed herein does not, in the judgment of the Administration, produce fair and reasonable results; and

(5) That nothing contained in this part shall be construed as a waiver of any right reserved to the Administration by statute or under the Agreement. The working papers referred to in this section shall be retained in accordance with the provisions of § 380.24 of this chapter.

[G.O. 74, 16 FR 6716, July 11, 1951, as amended at 30 FR 12356, Sept. 28, 1965]

§ 292.9 Applicability of procedure.

(a) Effective as of January 1, 1958, the procedure prescribed in this part shall not be applicable to accounting periods commencing on or after said date but shall be superseded by the procedure contained in Part 286 of this chapter pertaining to such accounting periods.

(b) All Account 090 items recorded in a complete calendar year subsequent to December 31, 1957, applicable to: (1) Accounting periods prior to January 1, 1958 shall be carried back to the applicable accounting period until such time as a final accounting for that accounting period shall have been submitted by the operator in accordance with the terms of this part; (2) accounting periods within a terminated recapture period with respect to which periods final accountings have been submitted shall be carried back to the next open year of such terminated recapture period, until a final accounting is submitted for the last year of such terminated recapture period; and (3) accounting periods within a terminated recapture period with respect to which all final accountings have been submitted, or accounting periods within a current recapture period with respect to which accounting periods final accountings have been submitted, shall be absorbed in the earnings of the year in which recorded. The final accountings referred to in this part shall be submitted by the operator within six months after: (i) The publication hereof, or (ii) the close of the calendar year in which all final operating-differential subsidy rates for such periods have been incorporated in the Operating-Differential Subsidy Agreement, whichever is later. Upon written request the Maritime Administrator may permit the acceleration of filing final accountings.

[G.O. 74, Amdt. 3, 26 FR 1790, Mar. 2, 1961]

PART 294—OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN CARRYING BULK RAW AND PROCESSED AGRICULTURAL COMMODITIES FROM THE UNITED STATES TO THE UNION OF SOVIET SOCIALIST REPUBLICS

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AUTHORITY: Sec. 204, 49 Stat. 1987, as amended (46 U.S.C. 1114).

SOURCE: General Order 116, 38 FR 20807, Aug. 3, 1973, unless otherwise noted.

§ 294.1 Purpose.

The regulations in this part prescribe rules in accordance with Title VI of the Merchant Marine Act, 1936, as amended (Act), governing the payment of operating-differential subsidy for United States-flag bulk cargo vessels engaged in carrying export bulk raw and processed agricultural commodities from ports in the United States (U.S.) to ports in the Union of Soviet Socialist Republics (U.S.S.R.) or other permissible ports of discharge, including the return voyage.

§ 294.2 Applications.

Applications for operating-differential subsidy contracts under this part may be obtained from the Secretary, Maritime Subsidy Board (Board), Maritime Administration, Department of Transportation, Washington, DC 20590.

§ 294.3 Definitions.

(a) *Bulk cargo vessels.* All vessels meeting the criteria in sections 601 and 610 of the Act, whether dry-bulk, tanker or break-bulk by design, shall be bulk cargo vessels for purposes of this Part and, as such, eligible for participation in this operating-differential subsidy program.

(b) *Foreign flag competition.* For purposes of establishing such sums as the Board determines are necessary to make the cost of operating U.S.-flag vessels competitive with the cost of operating similar vessels under the registry of a foreign country, the Board shall select a typical foreign-flag vessel which has actually participated in the carriage of export bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. In the event that it is not possible to obtain actual cost data for a selected typical vessel which has engaged in that trade the Board will establish such costs based upon the costs of a foreign-flag vessel which, in the opinion of the Board, has equivalent costs of operation.

(c) *Subsidized voyage*—(1) *Commencement.* A subsidized voyage shall commence at 0001 local time in the U.S. port of loading on the day that:

(i) The vessel's Notice of Readiness is accepted by the Charterer or its agent pursuant to the terms of the charter-party; or

(ii) The vessel commences loading: (*Provided,* That the vessel has all certificates of inspection required by the terms of the charter-party).

(2) *Termination.* A subsidized voyage shall terminate at 2400 local time on the day the subsidized bulk cargo vessel:

(i) Arrives at a U.S. port of call if it returns in ballast, provided that if the vessel returns to a U.S. port of call different from that at which it loaded cargo, the subsidized voyage shall terminate at the time the vessel would normally have returned to the port of loading, if that time is earlier;

(ii) Completes discharge of inbound cargo in a U.S. port if it has engaged in the carriage of bulk cargo in the U.S. import commerce and has not engaged in foreign-to-foreign commerce; or

(iii) Commences deviation from the general track of the normal ballast return voyage, if it engages in foreign-to-foreign commerce.

(3) *Limitation on subsidized voyage commencement and termination.* For vessels engaged in consecutive subsidized voyages, a subsidized voyage shall not commence and terminate on the same day.

(4) *Deviations to engage in U.S. import commerce.* A subsidized bulk cargo vessel shall be allowed: (i) A maximum of three and one-half days steaming time and (ii) loading and unloading time, in excess of the normal total steaming time for the ballast return voyage, if the vessel engages in the carriage of bulk cargo in the U.S. import commerce. For the purpose of determining the permissible deviation under this paragraph, the total steaming time of the inbound voyage shall be compared to the normal steaming time required for the ballast return from the last port of discharge of the U.S. export cargo to the first port of discharge of the U.S. import cargo. This paragraph shall not apply to vessels which engage in foreign-to-foreign commerce during a subsidized voyage.

(5) *Idleness or delay.* A period of idleness or delay is any period of time during a subsidized voyage when a vessel is either idled or delayed or anticipated to be idled or delayed from proceeding with its operations for two or more days. Examples of delays include, but are not limited to, delays in proceeding to loading or discharge berth, or delays incurred at berth prior to, during, or after loading or discharge operations.

(6) *Ineligible voyages.* No voyages shall be eligible for subsidy during which the subsidized bulk cargo vessel carries:

(i) Cargo in the domestic commerce of the U.S.;

(ii) U.S. preference cargo, including that covered by 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a; or

(iii) Any other commercial cargo simultaneously with the export bulk raw and processed agricultural commodities being carried to the U.S.S.R., except equipment which may be needed to facilitate unloading of such agricultural commodities.

(7) *Subsidized voyage days.* For subsidy payment purposes subsidized voyage days are divided into two categories: Port days and sea days. Port days are those subsidized days (i) from commencement of a voyage to time of departure from the first loading port, (ii) from time of arrival to time of departure from any subsequent port or ports of call, and (iii) if the vessel is engaged in the bulk carriage of inbound cargo, from the time of arrival at the final discharge port until termination of the voyage. Port days are computed for the voyage on the basis of accumulated days and hours per voyage to the nearest full day. Sea days are those subsidized days within the voyage exclusive of port days and are computed for the voyage on the basis of accumulated days and hours per voyage to the nearest full day. Cumulatively port days and sea days may not exceed total approved voyage days.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 39 FR 19481, June 3, 1974; 40 FR 36120, Aug. 19, 1975]

§ 294.4 Subsidy contract.

(a) *Expiration.* Unless extended, contracts executed in accordance with the rules and regulations of this part shall expire on December 31, 1973, except for purposes of renegotiations under this section and § 294.15 of this part. Subsidized voyages in progress as of midnight of that date may continue to their termination as defined in § 294.3(c)(2) for purposes of the payment of operating-differential subsidy.

(b) *Renegotiation of contracts.* The operating-differential subsidy contract shall provide that amounts otherwise payable thereunder shall be subject to renegotiation under § 294.15 of this part if the Board determines that the operator has earned excessive profits. In the determination of what constitutes excessive profits the Board shall consider the provisions of section 103 of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1213), and may take into consideration such other matters that the Board deems appropriate, including any other provision of said Renegotiation Act. The elimination of excessive profits shall be accomplished through the renegotiation of the operating-differential subsidy contract including withholding or recovering amounts paid or accrued with respect to any subsidized voyage. Payments received or accrued under other contracts between the operator and the Government shall not be taken into account for purposes of such renegotiation.

(c) *Subsidized voyage approval.* The operating-differential subsidy contract shall provide that each subsidized voyage must have the prior written approval of the Board. In acting upon a request for such approval, the Board will consider all pertinent facts, including the availability of appropriated funds, the most productive utilization of such funds, whether the charter rate is the maximum then obtainable, and the purposes and policies of the Act. The Board may impose such terms and conditions on its approval as it deems necessary. The Board shall not approve retroactively the subsidization of a voyage which has already commended.

§ 294.5 Voyage approval procedures.

(a) *Requests.* (1) Prior to each subsidized voyage, all operators, including bulk operators under long-term operating-differential subsidy agreements (ODSA) provided for in Part 252 of this chapter, shall be required to obtain approval of the Board. All requests for the approval of a subsidized voyage must be in writing. Telegrams are acceptable. The request must contain the following data:

(i) Name of operator;

(ii) Operating-differential subsidy contract number;

(iii) Vessel name;

(iv) Charterer;

(v) Load and discharge ports;

(vi) Lay days;

(vii) Commodities and estimated tonnage;

(viii) Charter rate and terms;

(ix) Expected date of commencing the voyage;

(x) Estimated duration of voyage; including estimated number of days at sea and estimated number of days in port;

(xi) Similar data concerning U.S. import cargo if such carriage is contemplated; and

(xii) Any other data as may be deemed necessary by the Board.

(b) *Finality.* Approvals and denials of requests for subsidized voyages are final and not subject to review or appeal, except that approvals may be canceled if the operator has knowingly or negligently provided incorrect or misleading data or information to the Board. Commencement of an approved subsidized voyage shall constitute the acceptance by the operator of all terms and conditions expressed in the approval.

(c) *Charters to aliens.* Pursuant to § 221.7 of this chapter, United States-documented bulk cargo vessels which are operated under long-term ODSA provided for in Part 252 of this chapter, that are engaged in carrying bulk agricultural commodities to ports in the Union of Soviet Socialist Republics or to other permissible ports of discharge, have approval under sections 9, 37 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 835 and 839), for specific charters to aliens for the carriage of grain to the Union of Soviet Socialist Republics or to other permissible ports of discharge. Any restrictions included in existing charter orders that prohibit the carriage of bulk agricultural commodities in such trade are waived.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)), sec. 19(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(b)), as amended, Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 1970 July 23, 1973))

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 42 FR 11837, Mar. 1, 1977]

§ 294.6 Sources of required data.

(a) *U.S. costs.* The Board will establish the operating costs of the subsidized vessel based on statements, payrolls, invoices and other data, certified as correct by an officer of the operator, and any other sources the Board considers appropriate.

(b) *Foreign costs.* The Board will establish the operating costs of the typical foreign-flag vessel from data obtained from the Maritime Administration's foreign representatives and any other sources the Board considers appropriate.

§ 294.7 Determination of subsidy.

(a) *In general.* For purposes of this part, the amount of operating-differential subsidy, as determined by the Board, shall not exceed the excess costs of U.S. wages of officers and crew; subsistence of officers and crew; maintenance and repairs; vessel insurance; stores, supplies and expendable equipment; fuel; and other vessel expenses over the estimated costs of the same items of expense of the typical foreign-flag vessel. An additional operating-differential subsidy amount, as determined by the Board, shall be paid for the fair and reasonable depreciation and interest costs directly attributable to the subsidized vessel, such amount not to exceed the excess of the same costs of operating a similar foreign-flag vessel. The operating-differential subsidy consisting of such excess costs will be determined as a per diem amount and shall be subject to the limitations imposed by §§ 294.(b), 294.8, 294.9 and 294.15.

(b) *U.S. costs.* The following items shall be used to establish operating costs for each subsidized vessel:

(1) *Wages of officers and crew.* Actual wage costs, including voyage payrolls, port relief crew payrolls, contributions to pension and welfare plans, social security and other taxes, and other employment costs directly attributable to the subsidized voyage;

(2) *Subsistence of officers and crew.* The net cost of food and other edibles

consumed by officers and crew, including port relief crews, during the subsidized voyage, including sales taxes, government inspection fees and shipside delivery and loading costs incurred for services performed by other than the crew and relief complements;

(3) *Maintenance and repairs.* The cost of maintenance and repairs attributable to the subsidized voyage shall be:

(i) The average cost per operating day of maintenance and repair expenses, including costs of drydocking and special surveys, but excluding costs which are reimbursed by third parties (e.g., insurance underwriters) and costs ineligible for subsidy pursuant to Part 272 of this chapter (except for the costs identified in § 272.11(c)), for a five-year period preceding the current year for vessels that have been owned or leased by the operator or a holding company, affiliate, subsidiary or associate for five years preceding the current year. For voyages commencing prior to August 1, 1973, costs previously submitted to and accepted by the Board in connection with an original application shall be utilized in determining the daily cost of maintenance and repairs. For voyages commencing on and after August 1, 1973, and prior to August 1, 1974, cost data for the five-year period ending at the close of the operator's fiscal year in 1972 shall be utilized. For voyages commencing on and after August 1, 1974, and prior to January 1, 1975, cost data for the five-year period ending at the close of the operator's fiscal year in 1973 shall be utilized. For voyages commencing on and after January 1, 1975, cost data for the five-year period ending at the close of the operator's fiscal year preceding the calendar year in which the voyage commenced shall be utilized. For all voyages terminating in 1973, the cost data will be adjusted by the Board to January 1, 1973, and for all voyages terminating in 1974 and subsequent years, adjusted to January 1 of the year in which the voyage terminated by application of survey reports of the U.S. Salvage Association, Inc., and the U.S. Monthly Index of Wages (Hourly Earnings in Manufacturing), published by the U.S. Bureau of Labor Statistics.

(ii) The fair and reasonable cost per operating day of maintenance and repair expenses for the subsidized vessel as determined by the Board, for vessels that have not been under such ownership or lease for the five-year period;

(4) *Vessel Insurance.* Vessel insurance shall include the following costs:

(i) The fair and reasonable net insurance premium costs, after brokerage and owner's adjustments, including foreign stamp taxes, in effect for the subsidized voyage. In determining fair and reasonable costs, effect shall be given to the deductible or franchise provisions included in the policies in effect during the three years preceding the current year (or such lesser period as the vessel has been in operation) for protection and indemnity insurance, and the five years preceding the current year (or such lesser period as the vessel has been in operation) for hull and machinery insurance, if the deductible or franchise provisions of current insurance policies differ from those in effect during such prior periods. With respect to fair and reasonable insurance costs for protection and indemnity insurance, there shall be included that portion of such actual supplemental premium assessments or refunds applicable to a subsidized voyage paid or received by the subsidized operator within three years following the termination of the subsidized voyage that commenced on or after September 17, 1974.

(ii) The fair and reasonable cost of claims for death, injury and illness of officers and crews absorbed by the operator under the deductible provision of protection and indemnity insurance policies attributable to the subsidized voyage as determined on the basis of the average cost per operating day for the subsidized vessel of such expenses paid during the three-year period preceding the current year (or such lesser period as the vessel has been in operation).

(iii) For purposes of the three-year and five-year period cost data referred to in paragraphs (b)(4)(i) and (ii) above, for voyages commencing prior to August 1, 1973, the data submitted to and accepted by the Board in connection with an original application shall be utilized. For voyages commencing on and after August 1, 1973, and prior to August 1, 1974, cost data for the three- and five-year periods ending at the close of the operator's fiscal year in 1972 shall be utilized. For voyages commencing on and after August 1, 1974, and prior to January 1, 1975, cost data for the three and five-year periods ending at the close of the operator's fiscal year in 1973 shall be utilized. For voyages commencing on and after January 1, 1975, cost data for the three- and five-year periods ending at the close of the operators fiscal year preceding the calendar year in which the voyage commenced shall be utilized.

(5) *Stores, supplies, and expendable equipment.* The cost of stores, supplies and expendable equipment attributable to the subsidized voyage shall be:

(i) The average cost per operating day of stores, supplies and expendable equipment expenses for the subsidized vessel for a three-year period preceding the current year for vessels that have been owned or leased by the operator or a holding company, affiliate, subsidiary or associate for three years preceding the current year. For voyages commencing prior to August 1, 1973, costs previously submitted to and accepted by the Board in connection with an original application shall be utilized in determining the daily cost of stores, supplies and expendable equipment. For voyages commencing on and after August 1, 1973, and prior to August 1, 1974, cost data for the three-year period ending at the close of the operator's fiscal year in 1972 shall be utilized. For voyages commencing on and after August 1, 1974, and prior to January 1, 1975, cost data for the three-year period ending at the close of the operator's fiscal year in 1973 shall be utilized. For voyages commencing on and after January 1, 1975, cost data for the three-year period ending at the close of the operator's fiscal year preceding the calendar year in which the voyage commences shall be utilized. For all voyages terminating in 1973, the cost data (for the three-year period) will be adjusted by the Board to January 1, 1973, and for all voyages terminating in 1974 and subsequent years, adjusted to January 1 of the year in which the voyage terminated, by application of the U.S. Wholesale Price Index of Total Manufacturers; or

(ii) The fair and reasonable cost per operating day of stores, supplies and expendable equipment expenses for the subsidized vessel as determined by the Board, for vessels that have not been under such ownership or lease for the three-year period.

(6) *Fuel.* The actual cost of fuel consumed at sea and in port during the subsidized voyage, including taxes and delivery costs, after taking into account bunkers on board upon commencement and termination of the subsidized voyage;

(7) *Other vessel expenses.* The actual cost of miscellaneous expenses directly attributable to the subsidized voyage and incident to the management and maintenance of the subsidized vessel. Items as exemplified in the partial list at § 282.764 of this chapter will be utilized, as appropriate;

(8) *Vessel depreciation.* The depreciation expense of the subsidized vessel for the period of the subsidized voyage shall be the actual unsubsidized construction cost, reconstruction cost or purchase cost of the subsidized vessel depreciated on a straight-line basis over the economic life of the vessel actually used by the operator to depreciate such construction, reconstruction or purchase cost, after taking into account the actual residual value of the vessel used by the operator for financial accounting purposes; and

(9) *Interest expense attributable to vessel indebtedness.* Interest expense of the subsidized vessel for the period of the subsidized voyage shall be the interest expense directly attributable to indebtedness incurred in connection with the construction, reconstruction or purchase of the subsidized vessel as determined by analysis of the date and principal amount of the debt, the principal amortization schedule, the interest rate and the scheduled payments of principal and interest during the period of the subsidy contract.

(c) *Foreign costs.* The following items shall be used to establish operating costs of the typical foreign-flag vessel:

(1) *Actual cost items.* The following operating costs of the selected typical vessel shall be taken at current actual figures, and, if such data are not current, then they shall be adjusted to the current cost level by appropriate indices contained in the International Financial Statistics published by the International Monetary Fund or the Monthly Bulletin of Statistics published by the United Nations:

(i) Wages of officers and crew;

(ii) Subsistence of officers and crew;

(iii) Maintenance and repairs;

(iv) Vessel insurance;

(v) Stores, supplies and expendable equipment;

(vi) Fuel; and

(vii) Other vessel expenses.

(2) *Vessel depreciation.* Depreciation expense shall be based on the cost of constructing or reconstructing the U.S. subsidized vessel in a representative foreign shipbuilding center or purchasing the vessel at world market price, which cost shall be depreciated on a straight-line basis over the same economic life actually used by the operator for the subsidized vessel in order to determine the foreign depreciation of such construction, reconstruction or purchase cost, after taking into account the residual value of the vessel actually used by the operator for financial accounting purposes.

(3) *Interest expense attributable to vessel indebtedness.* The interest expense shall be determined by assuming the same interest rate, repayment term, and method of principal amortization as those that actually exist for the subsidized vessel, and by applying those terms to obtain the interest which would be payable if the original principal of the debt had been the same percentage of the foreign cost of construction, reconstruction or purchase as the original construction, reconstruction or purchase debt of the subsidized vessel was of its construction, reconstruction or purchase cost.

(d) *Review.* The Board shall review the costs of each voyage for which subsidy is being sought and shall disallow for subsidy any cost resulting from inefficient or uneconomical operation.

(Sec. 204(b) Merchant Marine Act 1936, as amended (49 Stat. 1987, 46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 40 FR 20087, May 8, 1975; 41 FR 3299, Jan. 22, 1976]

§ 294.8 Leased Vessels.

(a) *In general.* Section 601 of the Act provides that an applicant for operating-differential subsidy must own or lease the subsidized vessel. For purposes of this part the term "leased vessels" includes only vessels leased under a bareboat charter party.

(b) *Calculation of vessel depreciation and interest expense attributable to vessel indebtedness*—(1) *In general.* For purposes of determining the U.S. cost of vessel depreciation and interest expense attributable to vessel indebtedness in paragraphs (b) (8) and (9) of § 294.7 for leased vessels, the appropriate data of the owner shall be used. In the event that the charterer cannot obtain such data from the owner, no subsidy will be paid in respect to those items.

(2) *Limitation.* In calculating the subsidy payable with respect to vessel depreciation and interest expense attributable to vessel indebtedness for leased vessel, U.S. costs for such items of expense in excess of the bareboat charter hire shall not be taken into account.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended by 2nd Rev., Amdt. 1, 38 FR 30880, Nov. 8, 1973]

§ 294.9 Charter rate determination and abatement of subsidy.

(a) *Fixtures made before July 1, 1973*—(1) *Charter rate determination.* Under the terms agreed to in connection with the signing of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Certain Maritime Matters, October 14, 1972, fixtures made before July 1, 1973 for shipments of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. were to be made on U.S.-flag vessels at the higher of:

(i) A rate for the cargo and route involved based upon the average of market charter rates for the years 1969, 1970 and 1971; or

(ii) The current market charter rate for the cargo and route involved (where such market charter rates did not exist, a rate would be determined by agreed adjustments to current market charter rates for the most comparable cargo and route) plus a rate premium of 10 percent of such rate.

(2) *Adjustments*—(i) *In general.* If calculated according to paragraph (a)(2)(i) of this section, the charter rate for carriage other than in the U.S. Gulf/Black Sea trade (Base Rate: $8.05) and for the carriage of barley was adjusted as follows:

Title		*Adjustment to base rate (per long ton)*
U.S. Gulf/Baltic	−$.30	Plus $1.00 per long ton, F.I.O.T. if scheduled date of arrival is between Nov. 1 and Apr. 30.
U.S. Gulf/Soviet Pacific	+$2.00	
U.S.N.H./Black Sea	−$.50	
U.S.N.H./Baltic	−$.50	Plus $1.00 per long ton, F.I.O.T. if scheduled date of arrival Baltic is between Nov. 1 and Apr. 30.
U.S. Pacific/Soviet Pacific.	+$.50	

(ii) *Barley.* For the carriage of barley, an additional $.40 per long ton shall be added.

(3) *Abatement determination.* The operating-differential subsidy otherwise payable on voyages fixed before July 1, 1973 under this part shall be subject to abatement on a voyage basis when fixtures are made and carriage occurs at the rate referred to in paragraph (a)(1)(ii) of this section. The abatement shall be comprised of two portions, one associated with the 10 percent rate premium and the second associated with the current market charter rate.

(i) To the extent that the charter rate, exclusive of any additional amount paid for calling upon more than one port of loading or discharge at the request of the charterer, exceeds the three-year average rate for the cargo and route involved as established under that Agreement and related letters, the amount of the rate premium abatement shall be equal to 100 percent of the revenue per ton attributable to the 10-percent rate premium. The commission attributable to the amount subject to abatement will be deducted from the abatement. For example, if the current market charter rate is $7.80 per ton, the minimum rate under the Agreement is 110 percent of $7.80 or $8.58 per ton. The amount subject to abatement in this case would be $.53 per ton, which is the amount by which the premium causes the charter rate to exceed the three-year average rate of $8.05 per ton. The abatement would be reduced by the amount of commission paid by the operator which is attributable to the $.53 per ton.

(ii) The amount of the current market charter rate abatement per ton shall be determined by multiplying the freight rate increments in the left hand column of the table below by the percentages in the right hand column. The commission attributable to the amount subject to abatement will be deducted from such abatement.

Charter rate increment	*Percentage*
For the first $.95 per ton that the rate in paragraph (a)(1)(ii), exclusive of the rate premium and any additional amount paid for calling upon more than one port of loading or discharge at the request of the charterer, exceeds the rate in paragraph (a)(1)(i), the percentage is	0
For the amount that such excess is between $.95 per ton and $1.95 per ton, the percentage is	50
For the amount that such excess is over $1.95 per ton, the percentage is	75

(4) *Example.* The provisions of this paragraph are illustrated by the following example:

A vessel is fixed for the carriage of U.S. export grain to the U.S.S.R. at a charter rate of $12.10 per ton, F.I.O.T. consisting of $11.00 representing the current market charter rate of $11.00 plus a rate premium of $1.10. The commission rate per the terms of the charter party is 3¾ percent of charter revenue. The average market charter rate for such cargo and route for the years 1969, 1970 and 1971 as established under the Agreement and related letters is $8.05 per ton.

Subsidy abatement is determined as follows:

	Per ton F.I.O.T.
Current market charter rate	$11.00
Add 10% premium	1.10
Fixture rate	$12.10
Less average of market charter rates for the years 1969, 1970 and 1971	8.05
Difference	$ 4.05
Abatement of subsidy per ton of cargo carried:	
Abatement attributable to the premium:	
Gross premium	$ 1.10
Less commissions at 3¾%	.04125
Net revenue	$ 1.05875
Abatement percenlage	100%
Abatement per ton	$1.05875
Abatement attributable to the excess of the current market charter rate over the average of market charter rates for 1969, 1970 and 1971	
Excess of $.95 or less	$ .95
Less commissions at 3¾%	.035625
Net revenue	.914375
Abatement percentage	0%
Abatement per ton	0
Excess between $.95 and $1.95	$ 1.00
Less commissions at 3¾%	.0375
Net revenue	.9625
Abatement percentage	50%
Abatement per ton	.48125
Excess over $1.95	$ 1.00
Less commissions at 3¾%	.0375
Net revenue	.9625
Abatement percentage	75%
Abatement per ton	.721875
Total abatement of subsidy per ton of cargo carried	$2.261875

(b) *Fixtures made on or after July 1, 1973*—(1) *Charter rate determination.* Under the additional arrangements executed May 30, 1973, concerning the implementation of the Agreement Between the Government of the United States and the Government of the Union of Soviet Socialist Republics Regarding Certain Maritime Matters signed October 14, 1972, fixtures made on or after July 1, 1973, for the carriage of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. will be made at a charter rate determined as follows:

(i) *Index number.* The monthly average voyage charter rate for the carriage of grain in the U.S. Gulf to Holland/Belgium trade as listed in the *Daily Freight Register,* published by U.K. Publications, Ltd., London, England on or about the fifth day of the month for the preceding month shall serve as an index number. The index number for the month of May as published in the *Daily Freight Register* on June 4, 1973, shall be applicable for fixtures made during the period July 1 through July 9, 1973. Thereafter, the index number published every month shall be effective for fixtures made from the 10th day of that month to the 9th day of the following month. In the event that a monthly average voyage charter rate for the carriage of grain in the U.S. Gulf to Holland/Belgium trade is not published in a given month, the index number will remain unchanged until a new rate for that trade is published.

(ii) *Base Charter Rate.* A Base Charter Rate shall be established monthly for the U.S. Gulf/Black Sea trade by multiplying the index number by 1.5107.

(iii) *Adjusted Charter Rate*—(A) *In general.* For the carriage of bulk raw and processed agricultural commodities in other than the U.S. Gulf/Black Sea trade and for the carriage of barley, the Base Charter Rate shall be adjusted as follows:

Trade	*Adjustment to Base Charter Rate*	
U.S. Gulf/Baltic	−$.55	Plus $1.00 per long ton F.I.O.T. if scheduled date of arrival is between No 1 and Apr. 30.
U.S. Gulf/Soviet Pacific.	+$3.75	
U.S.N.H./Black Sea	−$.95	
U.S.N.H./Baltic	−$.95	Plus $1.00 per long ton F.I.O.T. if scheduled date of arrival Baltic is between Nov. 1 and Ap 30.
U.S. Pacific/Soviet Pacific.	+$.95	

(B) *Barley.* For the carriage of barley, the charter rates provided above will be increased by $.40 per long ton.

(2) *Abatement determination*—(i) *In general.* The operating-differential subsidy otherwise payable on fixtures made on or after July 1, 1973 under this part shall be subject to abatement on a voyage basis.

(ii) *Abatement Level*—(A) *In general.* When the charter rate is the same as or less than the amounts shown in the table below, no abatement will occur.

Trade	*Abatement Level (per long ton)*	
U.S. Gulf/Black Sea	$9.00	
U.S. Gulf/Baltic	$8.70	Plus $1.00 if arrival is between Nov. 1 and Apr. 30.
U.S. Gulf/Soviet Pacific.	$11.00	
U.S.N.H./Black Sea	$8.50	
U.S.N.H./Baltic	$8.50	Plus $1.00 if arrival is between Nov. 1 and Apr. 30.
U.S. Pacific/Soviet Pacific.	$9.50	

(B) *Barley.* The Abatement Level for carriage of barley shall be at the amounts indicated above plus $.40 per long ton.

(iii) *Abatement.* To the extent that the charter rate, exclusive of any additional amount paid for calling upon more than one port of loading or discharge at the request of the charterer, exceeds the Abatement Level, the payment of subsidy will be abated as indicated below. The commission payable under the charter party attributable to the amount subject to abatement will be deducted from the abatement.

Excess of charter rate above abatement level	*Percent of abatement per long ton*
$1 or less	50
$1 to $7	75
Over $7	90

(iv) *Example.* The provisions of this paragraph are illustrated by the following example.

A vessel is fixed for the carriage of U.S. export grain (non-barley) from U.S. Gulf port to Black Sea port at a charter rate of $17.12 per ton, F.I.O.T. The Commission rate is 3¾ percent of the freight revenue.

Charter rate	$17.12
Abatement Level (U.S. Gulf/Black Sea)	9.00
Excess subject to abatement	$8.12
Excess of $1.00 or less	$1.00
Less commission (at 3¾ %)	(.0375)
Net revenue	.9625
Abatement percentage	50%
Abatement amount	$.48125
Excess between $1.00 and $7.00	$6.00
Less commission (at 3¾ %)	(.225)
Net revenue	5.775
Abatement percentage	75%
Abatement amount	$4.33125
Excess over $7.00	$1.12
Less commission (at 3¾ %)	(.042)
Abatement percentage	90%
Net revenue	1.078
Abatement amount	$.97020
Total Abatement of subsidy per ton of cargo carried	$5.78270

* * *

(c) *Fixtures made on or after April 1, 1975*—(1) *Charter rate determination.* With respect to carriage of bulk raw and processed agricultural commodities, fixtures made on or after April 1, 1975, shall be made at mutually acceptable rates as provided in Paragraph 3(a) of Annex III to the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Certain Maritime Matters, October 14, 1972.

(2) *Abatement determination*—(i) *In general.* Operating-differential subsidy otherwise payable on the carriage of bulk raw and processed agricultural commodities to the U.S.S.R. shall be subject to abatement on a voyage basis as provided in this paragraph.

(ii) *Abatement level*—(A) *ODS payable pursuant to this part.* Operating-differential subsidy otherwise payable pursuant to this part on fixtures made on or after April 1, 1975 shall not be abated when the charter rate is the same or less than the amounts shown in the following table:

Trade	*Abatement level (per long ton)*
U.S. Gulf/Black Sea	$13.00
U.S. Gulf/Baltic	[1] $12.70
U.S. Gulf/Soviet Pacific	$15.00
U.S.N.H./Black Sea	[1] $12.50
U.S.N.H./Baltic	$12.50
U.S. Pacific/Soviet Pacific	$13.50

[1] Plus $1.00 if arrival is between November 1 and April 30.

(B) *ODS payable pursuant to Part 252 of this subchapter.* Operating-differential subsidy otherwise payable pursuant to Part 252 of this subchapter on fixtures made on or after October 21, 1975 shall not be abated when the charter rate is the same or less than the amounts shown in the following table:

Trade	Abatement level (per long ton)
U.S. Gulf/Black Sea	$19.00
U.S. Gulf/Baltic	[1] 18.45
U.S. Gulf/Soviet Pacific	22.75
U.S.N.H./Black Sea	18.05
U.S.N.H./Baltic	[1] 18.05
U.S. Pac./Soviet Pacific	19.95

[1] Plus $1.00 if arrival is between Nov. 1 and April 30.

(C) *Barley.* The abatement level for the carriage of barley shall be the amount indicated in the table contained in paragraph (c)(2)(ii) (A) or (ii)(B) of this section, as applicable, plus $.40 per long ton.

(iii) *Abatement.* Operating-differential subsidy subject to abatement pursuant to paragraph (c)(2)(i) of this section shall be abated to the extent that the charter rate exceeds the applicable abatement level contained in paragraph (c)(2) (i) or (ii) of this section, as follows:

Excess of charter rate above abatement level	Percent of abatement per long ton
$1 or less	50
$1 to $7	75
Over $7	90

The amount of any abatement required by this paragraph shall be reduced by an amount equal to the commission payable under the charter party applicable to the amount subject to abatement.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 19707), July 23, 1973)

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended by 2nd Rev., Amdt. 1, 38 FR 30879, Nov. 8, 1973; 40 FR 22547, May 22, 1975; 41 FR 18849, May 7, 1976]

§ 294.10 Payment of subsidy.

(a) *Tentative per diem subsidy*—(1) *In general.* A tentative per diem subsidy amount (rounded to the nearest dollar) for each subsidized vessel will be incorporated in the operating-differential subsidy contract for wages of officers and crew, subsistence of officers and crew, vessel insurance, fuel, other vessel expenses, vessel depreciation, interest expense attributable to vessel indebtedness, maintenance and repairs and stores, supplies and expendable equipment. Such tentative subsidy amounts for maintenance and repairs and stores, supplies and expendable equipment also will be stated as differential percentages (rounded to two decimal places).

(2) *Partial payment.* After termination of an approved voyage, the operator shall be paid the following subsidy which shall be abated by an amount determined pursuant to section 294.9 and subject to reductions in subsidy pursuant to paragraph (c) of § 294.13.

(i) Ninety percent of the algebraic sum of the tentative per diem subsidy amounts for wages of officers and crew, subsistence of officers and crew, vessel insurance, fuel, other vessel expenses, vessel depreciation and interest expense attributable to vessel indebtedness, less any negative per diem amounts for maintenance and repairs and stores, supplies and expendable equipment, for each approved voyage day, and

(ii) An amount determined by multiplying any positive differential percentages for maintenance and repairs or stores, supplies and expendable equipment by the costs incurred for such items by the operator in any of the United States or the Commonwealth of Puerto Rico subsequent to commencement of the approved voyage but not to exceed ninety percent of the tentative per diem amounts for such items for each approved voyage day.

(b) *Final per diem subsidy*—(1) *In general.* As soon as practical after termination of an approved voyage, and after verification of historical cost data and expenses attributable to the approved voyage, a final per diem subsidy amount (rounded to the nearest dollar) for the vessel will be incorporated in the operating-differential subsidy contract for wages of officers and crew, subsistence of officers and crew, vessel insurance (other than protection and indemnity insurance), fuel, other vessel expenses, vessel depreciation, interest expense attributable to vessel indebtedness, maintenance and repairs, stores, supplies and expendable equipment, and protection and indemnity insurance. Such final subsidy amounts for maintenance and repairs, stores, supplies and expendable equipment, and protection and indemnity insurance also will be stated as differential percentages (rounded to two decimal places).

(2) *Final payment.* After final per diem amounts and differential percentages for the subsidized vessel on the approved voyage are incorporated in the operating-differential subsidy contract, the operator shall be paid subsidy as follows:

(i) The balance due of the algebraic sum of the final per diem subsidy amounts for wages of officers and crew, subsistence of officers and crew, vessel insurance, fuel, other vessel expenses, vessel depreciation and interest expense attributable to vessel indebtedness, less any negative per diem amounts for maintenance and repairs and stores, supplies and expendable equipment, for each approved voyage day.

(ii) The balance due of an amount determined by multiplying any positive differential percentages for maintenance and repairs or stores, supplies and expendable equipment by the costs incurred for such items by the operator in any of the United States or the Commonwealth of Puerto Rico during the five-year period following commencement of the approved voyage but not to exceed the total final per diem subsidy amounts for such items for each approved voyage day. If the operator sells, transfers or otherwise disposes of its interest in the subsidized vessel within such five-year period, no outstanding accruals of such total per diem amounts shall be paid unless the Board executes a separate agreement governing such payments.

(iii) The amount due for supplemental protection and indemnity insurance premium assessments received and paid by the subsidized operators within three years following termination of a subsidized voyage commenced on or after September 17, 1974, determined by applying the differential percentage for protection and indemnity premiums to the actual cost of such supplemental assessments.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 40 FR 20087, May 8, 1975]

§ 294.11 Preliminary voyage reporting requirements.

(a) *Commencement of subsidized voyage.* The operator shall notify the Assistant Administrator for Maritime Aids, Maritime Administration, Washington, DC 20590 by telex or other appropriate means when the subsidized voyage commences, as defined in paragraph (c)(1) of § 294.3. A copy of that report shall be sent to the Region Director of the Region in which the operator is headquartered.

(b) *Departure from port of loading.* The operator shall notify the Assistant Administrator for Maritime Aids, Maritime Administration, Washington, DC 20590 by telex or other appropriate means upon departure from port of loading. Such notification shall specify quantity, commodity and charter rate of cargo carried and destination. A copy of that report shall be sent to the Region Director of the Region in which the operator is headquartered.

(c) *Periods of idleness or delay.* The operator shall immediately notify the Board, by telegram or other appropriate means, of any period or anticipated period of idleness or delay sustained on a subsidized voyage. Such notice shall include the following items where applicable: Name or port where delayed, arrival date, estimated date vessel goes on loading berth, date vessel expected to go on demurrage, estimated completion date of loading and/or discharge, detailed reasons for delay, and steps being taken to resolve the delay. The operator shall inform the Board of any change in the circumstances from those reported in the initial telegram or subsequent telegrams. The Board shall determine whether such idleness or delay could have been avoided through efficient and economical operation and whether subsidy shall be payable, in whole or in part, for such period. If the delay was not caused by inefficient operation, but it results in a reduction of operating costs, the Board shall determine the fair and reasonable amount of subsidy, if any, applicable to such period, taking into consideration the costs involved. Failure to report promptly any delay period may result in termination of subsidy for that portion of the voyage.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 40 FR 36120, Aug. 19, 1975]

§ 294.12 Final voyage reporting requirements.

(a) *In general.* In order to determine compliance with the requirements of the operating-differential subsidy contract and this part, a Final Voyage Report is required to be submitted to the Office of Subsidy Administration, Maritime Administration, Washington, DC 20590, after termination of each approved voyage but prior to or simultaneously with the first billing for the partial payment as specified in paragraph (a)(2) of §§ 294.10 and 294.13.

(b) *Contents of report.* The report shall include the following items to the extent they are applicable to the approved voyage:

(1) *Name of vessel.*

(2) *Contract number.*

(3) A copy of the Notice of Readiness with the acceptance of the Charterer or its agent noted thereon.

(4) *U.S. loading port(s)*: Following information by port:

(i) Date and time of arrival.

(ii) Date and time of commencement of loading.

(iii) Date and time of completion of loading.

(iv) Date and time of departure.

(v) Quantity, commodity and charter rate of cargo loaded.

(5) *Foreign discharge port(s)*: Following information by port:

(i) Date and time of arrival.

(ii) Date and time of commencement of discharge.

(iii) Date and time of completion of discharge.

(iv) Date and time of departure.

(v) Quantity and commodity discharged.

(6) *Bunkering port(s)*: (If other than loading or discharge port):

(i) Date and time of arrival.

(ii) Date and time of departure.

(7) *Foreign loading port(s)*: Following information by port, if applicable:

(i) Date and time arrival.

(ii) Date and time of commencement of loading.

(iii) Date and time of completion of loading.

(iv) Date and time of departure.

(v) Quantity, and commodity of cargo loaded by port(s) of destination.

(8) *U.S. discharge port(s)*: Following information regarding discharge of U.S. import cargo by port, if applicable:

(i) Date and time of arrival.

(ii) Date and time of commencement of discharge.

(iii) Date and time of completion of discharge.

(iv) Quantity and commodity discharged.

(9) *U.S. port of arrival in ballast:*

(i) If port of arrival is the same as that at which vessel loaded outbound cargo: Date and time of arrival.

(ii) If port of arrival is different from that at which vessel loaded outbound cargo: Estimated date and time vessel would have arrived at U.S. port at which outbound cargo was loaded.

(10) *If the vessel engaged in the carriage of U.S. import cargo during the subsidized voyage:* Estimated number of days and hours that the steaming time of the inbound voyage exceeded the normal steaming time for a ballast return voyage from the last port of discharge of the U.S. export cargo to the first port of discharge of the U.S. import cargo.

(11) *If the vessel engaged in the carriage of foreign-to-foreign trade:* The date and hour that the vessel deviated from the general track of the normal ballast return voyage.

(12) *Number of subsidized days:*

(i) Days at sea.

(ii) Days in port.

(iii) Total subsidized days.

(13) *Delays.* The report must contain a detailed explanation of (i) any period of idleness or delay or (ii) any excessive delay at sea.

(c) *Submission.* The Final Voyage Report shall be submitted in duplicate and certified as correct by an official of the subsidized company.

(d) *Approval of voyage days.* After review, the operator will be notified by letter of the approved voyage days, in port and at sea, for use in preparing subsequent billings with respect to the subsidized voyage.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 39 FR 19481, June 3, 1974; 40 FR 36120, Aug. 19, 1975]

§ 294.13 Partial payment billing procedure.

(a) *In general.* Upon termination of an approved voyage a partial payment billing may be submitted for payment of an amount not to exceed 90 percent of the estimated operating-differential subsidy due in accordance with § 294.10(a)(2). The partial payment billing is to be prepared using the voyage days reported on the Final Voyage Report submitted pursuant to § 294.12 and the tentative per diem subsidy amounts and differential percentages incorporated in the operating-differential subsidy contract. If the Board has approved a different number of subsidized voyage days than reported on the Final Voyage Report, partial payment shall be based on the approved voyage days.

(b) *Partial payments of subsidy applicable to maintenance and repairs and stores, supplies and expendable equipment*—(1) *Negative differentials.* If the tentative per diem subsidy amounts incorporated in the contract for maintenance and repairs and/or stores, supplies and expendable equipment are negative, the partial payment will be reduced by 90 percent of the product of such negative per diem amount times the number of subsidized voyage days.

(2) *Positive differentials.* If the tentative per diem subsidy amounts incorporated in the contract for maintenance and repairs and/or stores, supplies and expendable equipment are positive, the partial payment will be limited to the lesser of (i) an amount determined by multiplying the differential percentage for such category of expense by the costs incurred for such items by the operator in any of the United States or the Commonwealth of Puerto Rico subsequent to commencement of the subsidized voyage or (ii) 90 percent of the tentative per diem amounts for such category of expense times the number of subsidized voyage days.

(c) *Reduction in subsidy payments*—(1) *Reduction in subsidy payments due to deviations, idleness or delay.* In accordance with paragraph (c)(4) of § 294.3 a subsidized vessel is allowed a maximum of 3½ days steaming time in excess of the normal total steaming time for a ballast return voyage when engaging in the carriage of bulk cargo in U.S. import commerce. Any time in excess of the allowable 3½ days steaming time plus loading and unloading time will result in a reduction of subsidy. Similarly, any time that is disallowed by the Board as a result of periods of idleness or delay pursuant to paragraph (c)(5) of § 294.3 will result in a reduction in subsidy. The required reduction in subsidy will be accomplished on Schedule A of the billing format set out in § 294.13(e) by reducing the "total voyage days" by the excess deviation time or unallowable period of idleness or delay to determine the "subsidized voyage days."

(2) *Reduction in subsidy payments due to reduced operating costs during periods of idleness or delay.* Reductions in costs during periods of idleness or delay will result in a reduction in subsidy. For partial payment billing purposes, a reduction in the amount of subsidy payable shall be effected through a reduction in the tentative wage subsidy amount applicable to the periods of idleness or delay. The reduction of the subsidy shall be computed as follows:

(i) The tentative wage per diem subsidy amount incorporated into the operating-differential subsidy contract shall be divided by the number of crew shown in the manning scale incorporated into the operating-differential subsidy contract to determine the average tentative wage per man per diem subsidy amount.

(ii) A man-day reduction shall be computed by multiplying the number of crew reduced below the contractual manning scale (regardless of crew rating) by the number of days of such reduction. If there is more than one crew reduction, the separate man-day crew reductions shall be totaled to determine the total man-day crew reduction. For example, if, for the first four days of the idle or delay period, the crew was reduced by six members and for the next twenty days, the crew was further reduced by 18 more crew members for a total crew reduction of 24, the total man-day crew reduction for the period would be 504 (six crew members for four days equal 24 man-days; 18 crew members plus six crew members, a total of 24 crew members, for twenty days equal 480 man-days).

(iii) The reduced accrued tentative wage subsidy amount shall be derived by multiplying the average tentative wage per man per diem subsidy amount by the total man-day crew reduction.

(iv) Ninety percent of the reduced accrued tentative wage subsidy shall be deducted from the partial payment billing vouchers.

(d) *Reduction in subsidy payments applicable to abatements.* The total subsidy determined as above will be reduced by the amount of the abatement calculated pursuant to § 294.9.

(e) *Forms.* The partial payment billing is to be prepared on a public voucher, standard forms 1034 and 1034a which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and is to be submitted in five copies, made up of an original (SF 1034), supported as set forth below, three supported copies and one unsupported copy (SF 1034a). The unsupported copy will be returned to the payee by the Treasury Department. The following schedules are to be used for computing the operating-differential subsidy due and as support of the public voucher. Each operator shall furnish its own required supply of these schedules.

SCHEDULE A

MA/MSB

(Company)

Calculation of operating-differential subsidy due for operations in connection with the carriage of bulk agricultural commodi
from the United States to the Union of Soviet Socialist Republics

Vessel name ....
Voyage number ....
Voyage dates from .... to ....
Total voyage days ....
Nonsubsidized voyage days:
  Deviation in excess of 3½ days ....
  Idle and delays ....
  Other (describe) ....
Subsidized voyage days ....

Subsidy payable

	Per diem	Subsidized voyage days	Total subsidy
Tentative ( ) Final ( )	$		$
Wages			
Subsistence			
Vessel insurance			
Fuel:			
At sea			
In port			
Other vessel expenses			
Vessel depreciation			
Interest expense on vessel indebtedness			$
1. Gross subsidy before M. & R., S.S. & E. and supplemental P. & I. premium subsidy			
2. Partial payment—90 percent of item 1			
Final payment—100 percent of item 1			
3. Add:			
a. Maintenance and repairs subsidy (Schedule A-1)			
b. Stores, supplies, and expendable equipment subsidy (Schedule A-2)			
c. Supplemental protection and indemnity insurance premiums (Schedule A-2a)			

Subsidy payable—Continued

	Per diem	Subsidized voyage days	Total subsidy
4. Subsidy payable before deductions			
5. Deductions:			
a. Abatement (Schedule A–3 or A–3a)			
b. Crew reduction (Schedule A–4)			
Total deductions			
6. Subsidy payable after deductions			
7. Less subsidy previously paid for this voyage			
8. Subsidy payable this voucher			$

(Show negative amounts in brackets)

SCHEDULE A–1

(Company)

Computation of Maintenance and Repairs Subsidy

Vessel ....

Voyage ....

	Total
I. M&R Subsidy Based on Expenses Paid:	
a. Total M&R Expenses (see note)	$
b. M&R Subsidy Percentage	%
c. M&R Subsidy (a × b)	$
II. M&R Subsidy Based on Per Diem Amount:	
a. M&R Per Diem Amount [1]	
b. Subsidized Voyage Days (Schedule A)	
c. M&R Subsidy (a × b)	
d. 90% of IIc	$
III. M&R Subsidy Payable:	
Partial—Limited to the lesser amount on Ic or IId	
Final—Limited to the lesser amount on Ic or IIc	[2] $

[1] Show negative per diem amounts in brackets.

[2] Enter on line 3a Schedule A.

NOTE: For purpose of supplemental partial payment or final payment of ODS on M&R expenses covering the five year period following the commencement of this voyage (§ 294.10(b)(2)(ii) the cumulative M&R expenses should be shown on line Ia.

SCHEDULE A–2

(Company)

Computation of Stores, Supplies and Expendable Equipment Subsidy

Vessel ....

Voyage ....

	Total
I. SS&E Subsidy Based on Expenses Paid:	
a. Total SS&E Expenses (see note)	$
b. SS&E Subsidy Percentage	%
c. SS&E Subsidy (a×b)	$
II. SS&E Subsidy Based on Per Diem Amount:	
a. SS&E Per Diem Amount [1]	
b. Subsidized Voyage Days (Schedule A)	
c. SS&E Subsidy (a×b)	
d. 90% of IIc	$
III. SS&E Subsidy Payable:	
Partial—Limited to the lesser amount on Ic or IId	
Final—Limited to the lesser amount on Ic or IIc	[2] $

[1] Show negative per diem amounts in brackets.

[2] Enter on line 3b Schedule A.

NOTE: For purpose of supplemental partial payment or final payment of ODS on SS&E expenses covering the five year period following the commencement of this voyage (§ 294.10(b)(2)(ii)) the cumulative SS&E expenses should be shown on line Ia.

SCHEDULE A-2a

(Company)

Computation of supplemental protection and indemnity insurance premium assessments/(refunds):

Vessel	
Voyage	
Total supplemental P. & I. insurance premium assessment/(refund)	$
P. & I. insurance subsidy percentage	
Supplemental P. & I. insurance premium subsidy accrual/(refund)	[1]

[1] Enter on line 3c schedule A.

SCHEDULE A-3

(Company)

Computation of Abatement for Fixtures Made Before July 1, 1973

Vessel		
Voyage		
Current market charter rate per ton	$	
Add 10% premuim		
Fixture rate		
Less average of market charter rates (for the last three years)	[1] 8.05	
Difference	$	
Computation of Abatement per ton of Cargo Carried:		
Abatement Attributable to the Premium:		
Gross premium per ton		
Less commissions @		
Net revenue per ton		
Abatement percentage	100%	
Abatement at 100%	$	$
Abatement attributable to the excess of the current market charter rate over the average of market charter rates for the last three years:		
Excess of $.95 or less		
Less commissions @		
Net revenue per ton		
Abatement percentage	0%	
Abatement at 0%	$	
Excess between $.95 and $1.95		
Less commissions @		
Net revenue per ton		
Abatement percentage	50%	
Abatement at 50%		$
Excess over $1.95		
Less commissions @		
Net revenue per ton		
Abatement percentage	75%	
Abatement at 75%		$
Total abatement per ton of cargo carried		(a)$
Abatement of Subsidy:		
Total tons of cargo carried		
Abatement per ton of cargo carried		(a)$
Abatement of Subsidy		[2] $

[1] For U.S. Gulf Port to Soviet Black Sea Port.
[2] Enter on line 5a of Schedule A.

SCHEDULE A-3a

(Company)

Computation of Abatement for Fixtures Made on or After July 1, 1973

Vessel	
Voyage	
Voyage Commencement Date	
Voyage Termination Date	
Trade	
Computation of Abatement Per Ton of Cargo Carried:	
Charter rate	$
Abatement Level for trade (§ 294.9(b)(2)(ii))	$

SCHEDULE A-3a—Continued

Excess .... $———

Excess of $1.00 or less .... $——— ....
Less commissions at .... %........
Net revenue per ton ....
Abatement percentage .... 50% ....
Abatement at 50% ....
Excess between $1.00 and $7.00 .... $——— ....
Less commissions at .... %........
Net revenue per ton ....
Abatement percentage .... 75% ....
Abatement at 75% .... $———
Excess over $7.00 .... $——— ....
Less commissions at .... %........
Net revenue per ton ....
Abatement percentage .... 90% ....
Abatement at 90% .... $———
Total abatement per ton of cargo carried .... (a)$———

Abatement of Subsidy:
Total tons of cargo carried .... ——— ....
Abatement per ton of cargo carried .... $———(a)....
Abatement of Subsidy .... [1] $———

[1] Enter on line 5a of Schedule A.

SCHEDULE A-4

(Company)

Reduction of Accrued Tentative Wage Subsidy Due to Crew Reduction

Vessel........
Voyage........
Port........
Period of Crew Reduction: From........ To........
I. Man-Day Crew Reduction:

(1) Days crew reduced		(2) Number of crew reduced		(3) Man-day crew reduction (col.(1)×(2)
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....
....	×	....	=	....

a. Total Man-Day Crew Reduction
II. Reduction of Accrued Tentative Wage Per Diem Subsidy: ....
a. Tentative Wage Per Diem Subsidy Amount (per ODS contract) .... $———
b. Total Crew (per Manning Scale–ODS contract) .... ———
c. Average Tentative Wage Per Man Per Diem Subsidy Amount (IIa÷IIb) .... $———
d. Reduced Accrued Tentative Wage Subsidy (IIc×Ia) .... $———
e. 90% of Reduced Accrued Tentative Wage Subsidy (90% of Id) (Enter on line 5b of Schedule A) .... $———

(f) *Operator's Affidavit.* An operator's affidavit, substantially in the form shown below, is to be submitted with each billing.

AFFIDAVIT

State of ———, City of ———, County/Parish of ———.

I, ——————— being duly sworn, depose and say, that I am ————of ———————— (herein referred to as the "operator"), and as such am familiar with (a) the provisions of the Operating-Differential Subsidy Agreement, Contract No. ——— dated as of ————, to which the Operator is a party, and (b) the operation of the vessel(s) covered by said Agreement; and (c) the accounts, books, records and disbursements of the Operator relating to such operation.

Referring to the public voucher dated ————————, covering (vessel name) ————————, on a voyage which commenced ——— ————and terminated, ——————, and attached, submitted by said Operator concurrently herewith for a payment on account in the sum of ————, under said Agreement, the Operator has fully complied with the terms and conditions of said Agreement and applicable orders, regulations, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled under the provisions of said Agreement and orders, regulations and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessel named in the attached schedules was in authorized service for the voyage on which the payment on account is requested and has not included in the calculations of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source; and further depose and say that during the course of this voyage the vessel named did not carry (1) any cargo in the domestic commerce of the United States; or (2) any U.S. preference cargo, including that covered by 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a; or (3) any other commercial cargo simultaneously with the export bulk raw and processed agricultural commodities being carried to the U.S.S.R. except equipment which may be needed to facilitate unloading of such agricultural commodities.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as the correctness of the amount stated to have been due, nor a waiver of any right or remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment on account pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ——day of ——, 19—. My commission expires————

———————————————

(Notary Public)

(g) *Submission of partial payment billing.* The partial payment billing is to be submitted to the Maritime Administration, Office of Budget and Accounts, Washington, DC 20590 for processing and payment.

(h) *Supplemental partial payment billing.* Supplemental partial payment billings for maintenance and repairs and store supplies and expendable equipment costs incurred by the operator in any of the United States or the Commonwealth of Puerto Rico subsequent to the preparation of the initial partial payment billing may be submitted not more frequently than once every 30 calendar days. Supplemental partial payment billings will be prepared and submitted in the same manner as the initial partial payment billing.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 40 FR 20087, May 8, 1975]

§ 294.14 Final payment billing procedure.

(a) *In general.* This section sets forth the procedures for the final payment billings and supplemental final payment billings by an operator. An operator may make final payment billings after the Maritime Administration completes audit of the operator's historical costs, subsidizable costs and revenues from the carriage of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. This section provides rules for the conduct of the audit and specifies when an operator may make final payment or supplemental final payment.

(b) *Audit*—(1) *In general.* Audit consists of verification by the Maritime Administration of the following four items in respect to each subsidized vessel:

(i) Historical costs;

(ii) Actual subsidizable costs incurred on the subsidized voyage;

(iii) Actual costs of maintenance and repairs (M&R) and stores, supplies and expendable equipment (SS&E) incurred in any of the United States or the Commonwealth of Puerto Rico after commencement of the subsidizable voyage;

(iv) Revenues earned on the subsidized voyage for the carriage of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R.; and

(v) Actual costs of supplemental protection and indemnity insurance premium assessments incurred or refunds received within three years following termination of a subsidized voyage that commenced on or after September 17, 1974.

(2) *Information necessary for audit.* In order to perform the audit, the operator must submit all documents relating to the items specified in paragraph (b)(1) of this section. These documents include, but are not limited to:

(i) Historical costs:

(A) *M&R*—invoices (as directed by the Maritime Administration) of suppliers and repair yards in support of costs paid during the five-year period preceding the current year which were submitted to the Board for tentative subsidy per diem calculation purposes;

(B) *Protection and indemnity insurance deductible absorptions*—crew injury, illness and death claim records and files compiled in connection with costs absorbed and paid under protection and indemnity insurance policy during the three-year period preceding the current year or such lesser period as the vessel has been in operation, which were submitted to the Board for tentative subsidy per diem calculation purposes;

(C) Deductible provisions of protection and indemnity insurance policies in effect during the 3 years preceding the current year and deductible provisions of hull and machinery insurance policies in effect during the 5 years preceding the current year.

(D) *SS&E*—invoices (as directed by the Maritime Administration) of suppliers in support of costs paid during the three-year period preceding the current year which were submitted to the Board for tentative subsidy per diem calculation purposes.

(ii) Actual subsidizable costs incurred on the subsidized voyage:

(A) *Wages of officers and crew*—voyage and port payrolls including overtime supports, individual pay vouchers, computation of payroll taxes and the various payroll contributions payable under collective bargaining agreements for the period of the subsidized voyage;

(B) *Subsistence of officers and crew*—computation of subsistence inventories aboard vessel both at the commencement and the termination of the subsidized voyage, vendors' invoices and delivery receipts for subsistence stores purchased; vendors' invoices for loading of subsistence stores aboard vessel;

(C) *Vessel insurance*—protection and indemnity insurance and hull and machinery insurance policies in effect during the subsidized voyage and applicable premium invoices, general and particular average claim files;

(D) *Fuel*—computation of fuel inventories aboard vessel both at the commencement and the termination of the subsidized voyage, vendors' invoices and delivery receipts for fuel purchased, contracts for the purchase of fuel;

(E) *Other vessel expenses*—invoices and receipts applicable to subsidizable costs incurred during the subsidizable voyage;

(F) *Vessel depreciation*—computation of depreciation and supporting data on vessel cost capitalized;

(G) *Interest expense attributable to vessel indebtedness*—computation of interest expense together with supporting loan agreements evidencing debt principal, interest rates, amortization schedules, and other terms of the loan.

(iii) Actual costs of M&R and SS&E incurred in any of the United States or the Commonwealth of Puerto Rico after the commencement of the subsidized voyage:

(A) *M&R*—invoices of domestic suppliers and repair yards for all such items charged to the subsidized vessel; and

(B) *SS&E*—invoices of domestic suppliers for all such items charged to the subsidized vessel including invoices for such items used to stock inventory immediately preceding the subsidized voyage.

(iv) Revenues earned on the subsidized voyage from the carriage of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. for the purpose of determining abatement of subsidy as provided in § 294.9—all contracts of affreightment, charter parties, bills of lading and other documents relating to revenues earned from the carriage of bulk agricultural commodities, including cargo loaded and cargo discharged reports.

(v) Actual costs of supplemental protection and indemnity insurance premium assessments or refunds as shown by premium invoices and other applicable records.

(3) *Time for submission of audit data.* Audit data shall be submitted as follows:

(i) Historical cost data shall be submitted as soon as possible after the commencement of a subsidized voyage.

(ii) All other data shall be submitted within one year from the termination of a subsidized voyage except as provided in paragraph (d) of this section.

(c) ***Final payment procedures***—(1) *In general.* After the audit is completed, the Maritime Administration will determine final subsidy per diem amounts and differential percentages. When such amounts are incorporated into the operating-differential subsidy agreement (ODSA), the operator shall make a final payment billing pursuant to paragraph (c)(8) of this section.

(2) *Final payments of subsidy applicable to maintenance and repairs and stores, supplies and expendable equipment*—(i) *Negative per diem subsidy amounts.* If the final per diem subsidy amount incorporated into the operating-differential subsidy contract for M&R or SS&E is negative, the final payment will be reduced by the product of such negative per diem subsidy amount multiplied by the number of subsidized voyage days.

(ii) *Positive per diem subsidy amounts and positive differential percentages.* If the final per diem subsidy amount or differential percentage incorporated into the subsidy contract for M&R or SS&E, is positive, the final payment will be limited to the lesser of:

(A) An amount determined by multiplying the differential percentage for such category of expense by the costs incurred by the subsidized operator for such items in any of the United States or the Commonwealth of Puerto Rico to the date of the final payment billing;

(B) An amount determined by multiplying the final per diem amount for such category of expense by the number of subsidized voyage days.

(3) *Reduction of final subsidy payments due to deviations, idleness or delays.* The reduction of subsidy required under § 294.13(c) because of deviations, idleness or delays during the subsidized voyage shall be made on final subsidy payment vouchers.

(4) *Reduction of final subsidy payments due to abatement of subsidy.* The total subsidy payment as determined under this part shall be reduced by the amount of subsidy abatement calculated pursuant to § 294.9.

(5) *Forms for final payment billing.* Final payment billing shall be submitted to the appropriate Maritime Administration Region Finance Office in the forms described in § 294.13(e). Payment to the operator will be made by Maritime Administration, Washington, D.C.

(6) *Affidavit.* The affidavit set forth in § 294.13(f) shall be submitted with the final payment billing, and each supplemental final payment billing.

(7) *Finality of final payment billing.* Except as provided in paragraph (d) of this section (relating to supplemental final payment billings for M&R and SS&E) costs for all subsidizable items shall be final when billed and not subject to adjustment by the operator.

(8) *Maximum time for final payment billing.* Final payment billing shall be made not later than 30 days from the date final per diem amounts and differential percentages are incorporated into the ODSA.

(d) ***Supplemental final payment billings***—(1) *In general.* Subsidy on M&R and SS&E provided for under paragraph (b)(2)(ii) of § 294.10, is not paid until: (i) The operator makes actual expenditures for such items in any of the United States or the Commonwealth of Puerto Rico within a five-year period from the date that the subsidized voyage commenced and (ii) such expenditures are audited by the Maritime Administration. Within that five-year period, billings may be made subject to the rules in this paragraph. Subsidy for supplemental protection and indemnity insurance premium assessments provided for under paragraph (b)(2)(iii) of § 294.10, are not paid until: (A) The assessments are received and paid by the subsidized operator within three years following termination of a subsidized voyage that commenced on or after September 17, 1974, and (B) such expenses are audited by the Maritime Administration.

(2) *Rules for supplemental billings.* Supplemental final payment billings may be made when the applicable per diem subsidy amount and differential percentage for M&R, SS&E or protection and indemnity insurance is positive.

(3) *Frequency of supplemental billings.* Supplemental final payment billings may not be made more often than once each 30 days. Each billing shall include the cumulative costs of M&R, SS&E or protection and indemnity insurance supplemental assessments on which subsidy is payable to the date of such billing.

[G.O. 116, 38 FR 20807, Aug. 3, 1973, as amended at 40 FR 20088, May 8, 1975]

§ 294.15 Renegotiation.

(a) *In general.* Paragraph (b) of § 294.4 of this part provides that subsidy otherwise payable under the operating-differential subsidy contracts for the carriage of bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R. shall be subject to renegotiation. This section provides rules for the filing of a statement of profit or loss on such carriage to provide the Board with a basis on which to review operating-differential subsidy contracts subject to renegotiation.

(b) *Requirement for filing.* Every operator receiving subsidy under a contract pursuant to this part must file a statement with the Board when its total gross receipts from operation under this part, including subsidy payments received or accrued and revenues earned from the carriage of U.S. import cargoes, are in excess of $1 million for any taxable year. In the event of a short taxable year, the $1 million minimum gross receipts shall be prorated on a daily basis. Only contracts of operators having receipts in excess of the minimum requirement for filing purposes may be subject to renegotiation under this section.

(c) *Filing statements.* Operators with contracts subject to renegotiation must file Maritime Administration Form MA-782 or an equivalent statement with the Secretary, Maritime Subsidy Board, Washington, DC 20590 (Secretary, MSB) within 120 days following the close of the operator's taxable year. Form MA-782 may be obtained from the Secretary, MSB.

(d) *Extension of filing date*—(1) *In general.* All requests for extension of time for filing the required statement must be made in writing to the Secretary, MSB prior to the date for filing. Extensions will be granted when the operator has been granted an extension for filing its Federal income tax return or upon presentation of other valid reason.

(2) *Length of extension.* Extensions will be granted for a reasonable length of time. Where an extension is sought because the due date for filing the Federal income tax return has been extended, a statement must be filed within 15 days from the date of filing the Federal income tax form.

(e) *Limitation on time for renegotiation.* If within one year from the date the statement is filed the Board does not commence renegotiation or inform the operator in writing that it intends to commence renegotiation, the operator is relieved from further liability for renegotiation under this part.

(f) *Scope of renegotiation*—(1) *Voyages.* Renegotiation will not be conducted on a voyage-by-voyage basis but will be conducted on the basis of all voyages subsidized pursuant to this part (renegotiable voyages) and terminated during the taxable year.

(2) *Consolidated renegotiations.* Neither filing of consolidated statements nor consolidated renegotiation will be permitted even though a consolidated Federal income tax return is filed. Thus, for example, if companies B and

C, which are subsidiaries of company A, each have an operating-differential subsidy contract, B and C must file separately for renegotiation whether or not a consolidated tax return is filed.

(g) *Preparation of Form MA-782*—(1) *In general.* The purpose of Form MA-782 is to make allocations of revenues and expenses between operations subject to renegotiation under this part (renegotiable operations) and all other operations (nonrenegotiable operations). When completed, the form will show the portion of net profit which is attributable to renegotiable operations and which may be reviewed as to reasonableness.

(2) *Applicability of standard Maritime Administration accounting.* Form MA-782 is based on the standard Maritime Administration accounting system prescribed in Part 282 of this Chapter and in Maritime Administration General Order 22. Operators which do not keep books according to this system are to submit a statement as similar to Form MA-782 as possible and attached thereto an explanation of the accounting system used and the basis for allocations between renegotiable operations and other operations.

(3) *Definition of voyage for purposes of renegotiation.* The definition of voyage is contained in § 294.3(c) of this part. However, for the purpose of determining profits subject to renegotiation, the following additional expenses may be allocated entirely to the renegotiable operations:

(i) Vessel cleaning expenses and reasonable costs of storing and supplying the vessel incurred before a renegotiable voyage:

(ii) Operating expenses of the vessel on the ballast voyage from last port of call of lay-up to port of loading for a renegotiable voyage.

(iii) Operating expenses incurred on a route deviation to engage in U.S. import commerce, notwithstanding the limitation contained in § 294.3(c)(4)(i) of this part;

(iv) Voyage maintenance and repair expenses incurred after and as a result of a renegotiable voyage.

(4) *Method of allocation.* All allocations between renegotiable and nonrenegotiable operations are to be direct, except for the following:

(i) "Inactive vessel expenses." All inactive vessel expenses are to be allocated directly to nonrenegotiable operations, unless specifically approved by the Board for allocation to renegotiable operations.

(ii) "Net income or expense of terminal operations, cargo handling operations, tug and lighter operations and other shipping operations." These accounts are to be allocated between renegotiable and nonrenegotiable operations in the same proportion as the charges for such facilities and services attributable to the renegotiable operation bear to the total of the charges for such facilities and services.

(iii) "Agency fees, commissions and brokerage earned, administrative and general expenses, management commissions, advertising, taxes other than income taxes, bad debt expenses and amortization of deferred charges, debt discount and expense, organization and pre-operating expense." These accounts are to be allocated between renegotiable and nonrenegotiable operations in the same proportion as the vessel operating and maintenance expense attributable to each operation bear to the total operations. Vessel operating and maintenance expense consists of those expenses proper for inclusion in Account 700—"Operating expenses; terminated voyages," excepting Account 760—"Charter hire," and in Account 800—"Inactive vessel expense," excepting Account 826—"Charter hire," as prescribed in Part 282 of this chapter.

(iv) "Interest expense on vessel mortgages and depreciation expense on vessels." Interest expense on vessel mortgages and depreciation expense on vessels subject to the provisions of this section are to be charged to renegotiable operations in proportion to the ratio of the number of days such vessel operates on subsidized renegotiable voyages to the total number of days in the tax year for which the vessel was owned. Interest expense on vessel mortgages and depreciation expense on vessels not included in the operating-differential subsidy contract are to be charged directly to nonrenegotiable operations. Interest expense not attributable to vessel mortgages, and depreciation and amortization expense other than for vessels are to be allocated between renegotiable and nonrenegotiable operations on the basis of the vessel operating and maintenance expense formula prescribed in paragraph (g)(4)(iii) of this section.

(v) Any other reasonable method of allocation for the expenses included in this paragraph may be utilized by the operator. If an alternate method of allocation is elected, an explanation of such method must be attached to the statement filed. The reasonableness of such alternate method of allocation will be subject to review by the Board.

(5) *Other income and deductions allocable to renegoticble service.* A schedule shall be attached detailing all other income, deductions, expenses and credits whether or not allocable in whole or in part to renegotiable operations in the amounts shown on the operator's Federal income tax return. An explanation of the method used for the allocations shall be included. These amounts shall be shown net of tax adjustments.

(6) *Non-Federal taxes.* Non-Federal taxes based on income shall be allocated directly to nonrenegotiable operations.

(7) *Net income in the case of a corporation.* This amount ordinarily will be that shown in the Federal income tax return before net operating loss deduction and special deductions. If the amount differs from that reported for tax purposes, a reconciling schedule and explanation shall be attached.

§ 294.16 Effective date.

The provisions of this part shall be effective on July 31, 1973, and supersede regulations originally appearing on October 21, 1972 and thereafter amended.

SUBCHAPTER D—VESSEL FINANCING ASSISTANCE

PART 298—OBLIGATION GUARANTEES

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AUTHORITY: Sec. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1279b); 49 CFR 1.66.

SOURCE: 43 FR 60912, Dec. 29, 1978, unless otherwise noted.

Subpart A—Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing the provisions of Title XI of the Merchant Marine Act, 1936, as amended by Pub. L. 92-507 (46 U.S.C. 1271 through 1279), governing Federal ship financing assistance.

§ 298.2 Definitions.

For the purpose of this part:

(a) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 through 1294).

(b) "Actual Cost" of a Vessel means as of any specified date, the aggregate as determined by the Secretary, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel (described in § 298.21(b)).

(c) "Affiliate" or "Affiliated" means any Person directly or indirectly controlling, controlled by or under common control with another Person.

(d) "Closing" means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Preferred Mortgage is executed as security to the Secretary.

(e) "Depository" means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof or the District of Columbia, which is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation and accepts deposits for purposes of implementing the program authorized by Title XI of the Act.

(f) "Depreciated Actual Cost" of a Vessel means the Actual Cost of the Vessel, as defined in paragraph (b) of this section (less a residual value of 2½ percent of United States shipyard construction cost), depreciated on a straightline basis over the useful life of the Vessel as determined by the Secretary, not to exceed twenty-five years from the date the Vessel was delivered by the shipbuilder or, if the Vessel has been reconstructed or reconditioned, the Actual Cost of the Vessel depreciated on a straightline basis from the date the Vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary.

(g) "Documentation" means all or part of the agreements relating to an entire Title XI financing which must be furnished to the Secretary, irrespective of whether the Secretary is a party to each agreement.

(h) "Guarantee" means the contractual commitment of the United States of America, represented by the Secretary, endorsed on each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default (described in § 298.40 of this part) and the date of payment.

(i) "Guarantee Fee" means the annual fee payable to the Secretary in consideration for the continuing Guarantees.

(j) "Indenture Trustee" means a bank with corporate trust powers or a trust company with a combined capital and surplus of at least $3,000,000, which has duties under the terms of a Trust Indenture, entered into with the Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursment of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligees. Pursuant to a specific authorization of the Secretary, the Indenture Trustee may also authenticate the Guarantees.

(k) "Letter Commitment" means a letter from the Secretary to an applicant for Guarantees, setting forth specific determinations made by the Secretary with respect to the applicant's proposed project, as required by the Act and regulations of this part, and stating the Secretary's commitment to execute Guarantees, subject to compliance by the applicant with any conditions specified therein.

(l) "Maritime Administration" means that agency created within the Department of Transportation by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036).

(m) "Mortgage" means a Preferred Mortgage on any Vessel documented under United States law.

(n) "Obligation" means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

(o) "Obligee" means the holder of an Obligation.

(p) "Obligor" means any party primarily liable for payment of principal of or interest on any Obligation.

(q) "Paying Agent" means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

(r) "Person" means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

(s) "Preferred Mortgage" means a Mortgage, whenever made, that—

(1) Includes the whole of a Vessel;

(2) Is filed in substantial compliance with 46 U.S.C. 31321;

(3) Covers a documented Vessel or a Vessel for which an application for documentation has been filed that is in substantial compliance with the requirements of 46 U.S.C. Ch. 121 and the regulations prescribed under that chapter by the United States Coast Guard; and

(4) Has as the mortgagee—

(i) A State;

(ii) The United States Government;

(iii) A Federally insured depository institution, unless disapproved by the Secretary for that vessel;

(iv) An individual who is a citizen of the United States;

(v) A person qualifying as a citizen of the United States pursuant to provision of 46 App. U.S.C. 802; or

(vi) A person approved by the Secretary pursuant to regulations at 46 CFR 221.43

(t) "Secretary" means the Secretary of Transportation, acting by and through the Maritime Administrator, Department of Transportation, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Transportation or the Maritime Administrator, Department of Transportation.

(u) "Secretary's Note" means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(v) "Security Agreement" means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the obligor to the Secretary as security for the issuance of Guarantees.

(w) "Vessel" means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States.

[43 FR 60912, Dec. 29, 1978, as amended at 54 FR 14813, Apr. 13, 1989]

§ 298.3 Applications.

(a) *Content and Amendment.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and be certified in the manner prescribed on said form. All required information, including copies of any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements with respect to the Vessel or Vessels, shall be presented on the form or in exhibits and schedules submitted with the application. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees stating the name of the applicant and the date of the application. Any amendment of data contained in the application filed shall be marked "Amendment," and shall contain a statement on the first page thereof, clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of application. The certification required on Form MA 163 shall be affixed to each amendment.

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least six months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 30 day period after submission, the Secretary shall perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data are required, the Secretary shall notify the applicant promptly in writing. The applicant shall meet requests for additional information in a timely manner. If at the end of nine months from the submission date, unless such time period is extended within the discretion of the Secretary, the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, the Secretary shall notify the applicant in writing that the application will be dismissed without prejudice. If an application is not approved within one year from the submission date, unless such time period is extended by the Secretary, the Secretary shall notify the applicant in writing that processing of the application is terminated and that the applicant may reapply.

(2) *Time requirements for documentation.* An applicant to whom a Letter Commitment has been issued shall submit four sets of the documentation to the Secretary for review. The documentation shall be submitted to the Secretary for review at least six weeks prior to the anticipated closing to afford the Secretary time to complete an adequate review of the documentation. The applicant shall utilize the standard form of documentation which will be provided by the Secretary.

(3) *Processing applications.* In processing applications, the Secretary shall consider the different degrees of risk involved with different applications.

(4) *Additional assurances.* For those applications not involving well established firms with strong financial qualifications and strong market shares, seeking financing guarantees for replacement vessels in an established market, in which projected demand exceeds supply, the Secretary may require additional assurances prior to approval, such as firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interest on other property and similar arrangements.

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of $1,000, which will be nonrefundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(d) *Confidential Information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. The same requirement shall apply to any amendment to the application. If no claim of exemption is made when the application or amendment is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act (FOIA), of any information contained in the application. The following procedures shall apply with respect to the assertion and review of FOIA exemption claims:

(1) *Form and bases for claim.* Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, by a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments or amendments thereto, to which exemption from disclosure is claimed by noting "Confidential Information" thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum

or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority.

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

(e) *Priority.* The Maritime Administration shall give priority for processing applications to vessels capable of serving as a naval and military auxiliary in time of war or national emergency, and requests for financing construction of equipment or vessels less than one year old as opposed to the financing of existing equipment or vessels that are one year old or older. Any applications involving the purchase of vessels currently financed under Title XI will also receive priority consideration for purposes of processing the assumption of the obligations as will applications from those willing to take guarantees for less than the normal term for that class of vessel.

(Approved by the Office of Management and Budget under control number 2133-0018)

[43 FR 60912, Dec. 19, 1978, as amended at 47 FR 25530, June 14, 1982; 50 FR 9446, Mar. 8, 1985; 50 FR 33050, Aug. 16, 1985]

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act, the applicant and any other Person, (including, but not limited to settlors, owner trustees, owner participants, bareboat charterers and such charterers other than bareboat charterers whose charter exceeds the blanket approval period provided for in Part 221 of this Title 46), shall establish its United States citizenship, within the meaning of section 2 of the Shipping Act, 1916, (1916 Act), as amended, (46 U.S.C. 801-852), sections 37 and 38 of the Merchant Marine Act, 1920, as amended, (46 U.S.C. 861-889), and, as applicable, section 905(c) of the Act, unless the Secretary approves a non-citizen participation under the authority of sections 9 and 41 and section 37, as applicable, of the 1916 Act. The Secretary will not approve an application providing for ownership of such Vessel by, or bareboat chartering of such Vessel to, a non-U.S. citizen. See also Part 221 of this Title 46 concerning the documentation, transfer or charter of vessels to non-U.S. citizens. Citizenship may also be required of any Person who does not have a legal or beneficial ownership in the Vessel if such Person is the operator or has authority to direct the operation of the Vessel on behalf of the Shipowner.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR Part 355.

(c) *After Letter Commitment.* Any Person who has become identified with the project, for a reason indicated in paragraph (a) of this section, and who has not previously established United States citizenship within the prior twelve calendar months, promptly shall establish its United States citizenship in the form and manner prescribed in 46 CFR Part 355.

(d) *Supplemental proof.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (c) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such Closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such Closing.

§ 298.11 Vessel requirements.

Each Vessel to be constructed, reconstructed or reconditioned and financed by issuance of Guarantees shall meet the following criteria:

(a) *United States Construction.* A vessel financed by obligation guarantees for which a Letter Commitment is issued on or after April 7, 1986 is considered to be of United States construction if:

(1) It is built entirely in a shipyard or shipyards of the United States within the meaning of section 505 of the Act;

(2) All components of the hull and superstructure are fabricated in the United States; and

(3) The vessel is assembled entirely in the United States.

(b) *Actual Cost.* The applicant's estimated actual cost as described in § 298.21(b), must be approved by the Secretary for the construction, reconstruction, reconditioning of a vessel as a condition for issuance of the Letter Commitment. The Secretary may require the applicant to have the shipyard with whom he has contracted to build the vessel to submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data. The estimated cost of the vessel may include escalation for the anticipated construction period of the vessel, as described in § 298.21(e).

(c) *Class, condition and operation.* The Vessel shall be constructed, maintained and operated so as to meet the highest classification, certification, rating and inspection standards for vessels of the same age and type imposed by the American Bureau of Shipping (ABS), or such other standards as may be approved by the Secretary, and comply with all applicable laws, rules and regulations as to condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and all applicable treaties and conventions to which the United States is signatory, including, but not limited to the International Convention for Safety of Life at Sea. All Vessels carrying passengers or freight shall be deemed to be carrying such passengers or freight for hire, and shall be inspected and certificated in accordance with the applicable United States Coast Guard regulations, if any, at the earlier of the delivery of such Vessel or Vessels and the initial Closing.

(d) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of class (if the Vessel is classified), and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

[43 FR 60912, Dec. 29, 1978, as amended at 51 FR 7796, Mar. 6, 1986]

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant is an incorporated company, it shall submit the following identifying information:

(i) Exact name of applicant and tax identification number;

(ii) State in which incorporated and date of incorporation;

(iii) Address of principal executive offices and of important branch offices, if any;

(iv) The name, address, nationality and number and type of capital shares owned by each officer and director of the corporation.

(v) The name, address, nationality, and number of capital shares owned by each person not named in the paragraph (b)(1)(iv) answer, owning of record or beneficially 5 percent or more of any class of capital shares issued by the applicant;

(vi) A brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights with respect to any share of the applicant are owned, controlled or exercised, or whereby the control of the applicant is in any way held or exercised, by any person not the holder of legal title to such shares. (Give the name, address, nationality, and business of any such person, including the form of the organization.); and

(vii) A certified copy of the certificate of incorporation, charter and bylaws.

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* If the applicant is a partnership, joint-venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of partnership, association, or unincorporated company, and tax identification number;

(ii) Business address;

(iii) Date of organization;

(iv) Name of partners (general and special) of the partnership or trustee and holders of beneficial interest in the association or company;

(v) Equity interest or percentage of capital contribution of each partner, trustee, or beneficial owner;

(vi) If any partners are individuals, provide:

(A) Date of birth of each;

(B) Place of birth of each; and

(C) Nationality of each;

(vii) If a partner is a corporation, provide information requested in paragraph (b)(1) of this section.

(viii) Certified copy of Partnership or Joint Venture Agreement, as amended; and

(ix) Offering Memorandum of Limited Partnership.

(3) *Individual.* If the applicant is an individual, he(she) shall submit the following identifying information:

(i) Name;

(ii) Address;

(iii) Date of birth;

(iv) Place of birth;

(v) Nationality;

(vi) Principal place of business; and

(vii) Trade name under which business is conducted.

(c) *Applicants: business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of applicant and of any predecessor of the applicant. If any change in the principal business activities is presently contemplated (whether in connection with the work to be financed by the guarantees applied for, or otherwise), applicant shall give a brief statement of the nature and circumstances thereof;

(2) A list of all companies or persons (hereinafter referred to as related companies) that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, the applicant. Also indicate the nature of the business transacted by each, the relationships between the companies named and the nature and extent of the con-

trol. This information may be furnished in the form of a chart. Specify whether any related companies have previously applied for or received any Title XI assistance;

(3) A statement of whether or not during the past 5 years the applicant, or any predecessor or related company, has been in bankruptcy or in reorganization under the Federal Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether or not any substantial property of the applicant or a predecessor or related company has been acquired in any such proceedings or has been subject to foreclosure or receivership during such period, and details of all such occurrences; and

(4) A statement of whether or not the applicant or any predecessor or related company is now, or during the past 5 years has been, in default under any agreement or undertaking with others or with the United States or guaranteed or insured by the United States.

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the applicant; and

(2) The name and address of each organization engaged in business activities related to those carried on or to be carried on by the applicant with which any person named in answer to paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the prinicipal properties of the applicant employed in its business, other than vessels, describing encumbrances, if any;

(2) A statement with respect to each vessel owned by the applicant, or operated by it under charter, stating name, gross tonnage, net tonnage, deadweight tonnage, age, type, speed, registry, cargo capacity and number and type of cargo units (container, trailer, etc.); and

(3) A summary statement which addresses the services, routes, or line (including ports served) on which the applicant operates any of the vessels owned or chartered by it. Also, a schedule and tonnage of cargo carried by the applicant during the two preceding years, the units carried (containers, barges, passengers, etc.) and the cargo capacity utilization factor experienced.

(f) *Operating ability.* The applicant shall submit a detailed statement showing its ability to successfully operate the vessel(s), including name, education, background of, and licenses held by all shore management personnel concerned with the physical operation of the ships owned by the applicant or proposed for construction. If not now an operator of vessel(s), the applicant shall indicate a proposed organizational structure of key operating personnel or the name of the proposed operating agent. If now the owner and/or operator of ships, the applicant shall furnish data as to union affiliations and existing contracts necessary to the management and operation of the vessel(s) covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which company acts as agent. If a company other than the applicant is designated to operate the vessel(s), then the above information shall be provided for that company, together with a copy of the proposed operating agreement(s).

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9446, Mar. 8, 1985]

§ 298.13 Financial requirements.

(a)(1) *In general.* To be eligible for guarantees, the applicant and/or the parent organization (when applicable), and any other participants in the project having a significant financial or contractual relationship with the applicant shall submit information, respectively, on their financial condition. This information shall be submitted at the time of the application and supplemented as subsequently required by the Secretary. In addition, the applicant shall submit information satisfactory to the Secretary that financial resources are available to support the project which is the subject of the Title XI application.

(2) *Cost of the project.* Applicant shall submit the following cost information with respect to the project:

(i) A detailed statement of the estimated actual cost of construction, reconstruction or reconditioning of the vessel(s) including those items which would normally be capitalized as vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to vessel(s) delivery. Each item of foreign equipment and services shall be excluded from Actual Cost unless a waiver is specifically granted for the item. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

(ii) A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(iii) A detailed statement showing any other costs associated with the project which were not included in paragraphs (a)(2) (i) and (ii) of this section, such as: legal and accounting fees, printing costs, guarantee fees, vessel insurance, underwriting fees, fee to affiliates, etc.

(iv) If the project involves refinancing, the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and supplemental schedules shall be submitted at the time of filing the application.

(3) *Financing.* The applicant shall describe, in detail, how the costs of the project (sums referred to in paragraph (a)(2) of this section) are to be funded and the timing of such funding. The applicant shall include any vessel trade-ins, related or third party financings, etc. The applicant shall also provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved. If the applicant intends to utilize co-financing (involving a blend of Title XI and private financing for the 75% debt portion), the terms and conditions of such financing shall be subject to approval by the Secretary. The applicant shall demonstrate with financial statements that at least 25 percent of the construction costs of the vessel(s) will be in the form of equity and not additional debt. The applicant shall disclose all of the vessel(s) financing in the format as prescribed by the Title XI application procedures.

(4) *Financial Information.* The applicant shall submit the following additional financial statements with respect to both the proposed Title XI project and the overall operations of the applicant, footnoted to explain the basis used for arriving at the figures:

(i) The most recent financial statement of the applicant, its parent and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If the applicant is a new entity or is to be funded from or guaranteed by external source(s), it shall provide the above mentioned statements for the funding source(s);

(ii) A pro forma balance sheet of the applicant as of the estimated date of execution of the guarantees reflecting the assumption of the Title XI obligations, including the current liability;

(iii) A schedule of amortization of all existing debt (Title XI or otherwise) of the applicant for the period in which the guarantees are to be outstanding; and

(iv) A sources and uses statement for the first full year of operations and the next four years, including a clear source of funding for the payment of all debt when due.

(b) *Financial definitions.* For the purpose of this section and §§ 298.35 and 298.42 of this part:

(1) "Company" means any Person subject to financial requirements imposed under paragraphs (d) and (e) of this section and paragraphs (b) and (c)

of § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) "Working Capital" means the difference between current assets and current liabilities, both determined in accordance with generally accepted accounting principles, adjusted as follows:

(i) Current assets shall be reduced with respect to:

(A) Amounts in or required to be set aside in any Title XI Reserve Fund, pursuant to § 298.35(e) or CCF Security Amount prescribed by § 298.35(f), (excluding that portion of such fund which is available for the payment of current liabilities) that is being maintained pursuant to an agreement covering a Vessel owned or leased by the Company, or in another similar fund required under any other mortgage, indenture or other agreement to which the Company is a party;

(B) Any securities, obligations or evidences of indebtedness of an Affiliate of the Company or of any stockholder, director, officer or employee (or any member of the family of the Company or of such Affiliate) except reasonable advances to agents required for the normal current operation of the Company's Vessels and receivables outstanding for not more than 60 days, arising out of the ordinary course of business; and

(C) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expense, except where the Secretary determines such reduction to be inappropriate.

(ii) Current liabilities shall be increased by one-half of the annual payment of all charter hire and other lease obligations (having a term of more than six months), other than charter hire and other lease obligations already included and reported as a current liability on the Company's balance sheet. Further, in determining current liabilities there shall be deducted any excess of unterminated voyage expense over unterminated voyage revenue, except where the Secretary determines such reduction to be inappropriate.

(3) "Equity" (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but exclusive of (i) any receivables from an Affiliate of the Company or any stockholder, director, officer, or employee (or any member of the employee's family) of the Company, or of an Affiliate of the Company (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and (ii) any increment resulting from the reappraisal of assets.

(4) "Long Term Debt" means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long Term Debt in accordance with generally accepted accounting principles, less the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. There shall also be included Deferred Lease Hire, any guarantee or other liability for the debt of any other Person (except fees and expenses of an Indenture Trustee and endorsements for deposits of checks and other negotiable instruments acquired in the ordinary course of business). Deferred income taxes shall not be included in Long Term Debt.

(5) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel and those other items which customarily would be capitalized as Vessel costs under generally accepted accounting principles.

(6) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel, depreciated on a straight line basis over the same useful life of the Vessel as determined by the Secretary for Actual Cost, and depreciated as required by § 298.21(g).

(7) "Deferred Lease Hire" means as of any date, the outstanding long term portion of lease or charter hire (other than lease or charter hire already included and reported as a liability on the Company's balance sheet) relating to vessels, major equipment or facilities leased or chartered by the Company. The Secretary shall determine:

(i) Which leases or charters are to be included in the computation of Deferred Lease Hire; and

(ii) The computation of the outstanding long term portion of such lease or charter hire, which computation will not exceed the greater of:

(A) The amount of the Obligations relating to the leased or chartered asset;

(B) One-half the aggregate of all lease or charter hire (excluding operating components) over the term of the lease or character; and

(C) The amount determined in accordance with generally accepted accounting principles.

(c) *Applicability.* The financial resources shall be adequate to meet the Equity requirements in the project and existing Working Capital requirements, as set forth in paragraphs (d) and (e) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels to be security to the Secretary for the Guarantees, except that if the owner is not the operator, the overall financial requirements shall be allocated among the owner, the operator and other parties as determined by the Secretary.

(2) The Company shall satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, a pro forma balance sheet shall be submitted at the time of the application, reflecting any adjustment made pursuant to paragraph (d)(1)(i) of this section, and a revised pro forma balance sheet, reflecting the completion of the projected financing, shall be submitted at least five business days before the first Closing at which the Obligations are issued.

(d) *Primary financial requirements at Closing.* Where the primary minimum financing requirements at Closing are satisfied, the financial convenants in § 298.35(b) are applicable. Primary financial requirements can apply to one or more Companies, and are determined as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal Vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, the Secretary may adjust the requirement as considered appropriate. Also, if the Secretary determines that the Company's Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, the Secretary may make adjustments to the Working Capital requirements.

(ii) *Equity (net worth).* The Company's Equity shall be the greater of: (A) 50 percent of its Long Term Debt or (B) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment.

(2) *Lessee or charterer as operator.* Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The operator's Working Capital requirement shall be the same as that which would have otherwise been imposed on the owner as operator under paragraph (d)(1)(i) of this section and based on the same premise stated therein.

(ii) *Long Term Debt.* The operator's Long Term Debt shall not be greater than twice its Equity.

(iii) *Equity (net worth).* Different Equity requirements shall be imposed on the owner and operator of the Vessel, respectively, as follows:

(A) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(B) The operator's Equity shall be the same as that which would have otherwise been required of the owner as operator under paragraph (d)(1)(ii) of this section.

(e) *Special financial requirements at closing.* If the proposed project involves a leverage lessor, parent company or "hell or high water" charterer committed to financing the debt service for the term of the Guarantees and who meets the primary financial requirement at closing, then with respect to the applicant, the eligibility for Guarantees may be based upon satisfaction of special financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this part. Special financial requirements are as follows:

(1) *Owner as operator.* Where the owner is the Vessel operator, the special requirements at Closing are as follows:

(i) *Working Capital.* The Company's Working Capital, which may be adjusted by the Secretary in accordance with the provisions set forth in paragraph (d)(1)(i) of this section, shall be an amount at least equal to the sum of the following (less the annual financing liability related to the Obligations):

(A) Eight percent of the estimated Capitalizable Cost of a Vessel to be financed upon delivery (redelivery in the case of a reconstructed or reconditioned Vessel), or eight percent of the estimated Depreciated Capitalizable Cost of a Vessel to be financed or refinanced after delivery. With respect to a reconstructed or reconditioned Vessel, the estimated Capitalizable Cost or Depreciated Capitalizable Cost, whichever is applicable (depending upon when financing occurs), shall be that related only to the cost of work performed in the reconstruction or reconditioning;

(B) One year's premium for vessel insurance including Hull, Machinery, Protection and Indemnity, and War Risk coverage; and

(C) One year's Guarantee Fee.

(ii) *Equity (net worth).* The Company's Equity shall be at least equal to 90 percent of the Equity as shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but not less than the sum of the following:

(A) The difference between: (*1*) The estimated Capitalizable Cost of a new Vessel to be financed upon delivery, the estimated Capitalizable Cost of the work to be performed in reconstructing or reconditioning a Vessel, the Depreciated Capitalizable Cost of an existing Vessel to be refinanced or the Depreciated Capitalizable Cost of a new Vessel to be financed after delivery, and (*2*) the amount of the Guarantees; and

(B) The amount of Working Capital as determined in accordance with the provisions of paragraph (e)(1)(i) of this section.

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the special financial requirements at Closing are as follows:

(i) *Working Capital.* The Company shall have Working Capital in an amount determined in accordance with the provisions of paragraph (e)(2)(i) of this section, applicable if the owner were the operator.

(ii) *Equity (net worth).* Different Equity requirements shall be imposed on the operator and the owner, respectively as follows:

(A) The operator shall have Equity at least equal to 90 percent of the Equity shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but no less than its Working Capital requirement.

(B) The owner shall have Equity in an amount determined in accordance with the provisions of paragraph (e)(1)(ii)(A) of this section.

(f) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, the Secretary may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraphs (d) and (e) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(g) *Subordinated debt considered to be Equity.* With the consent of the Secretary, part of the Equity requirements applicable under paragraphs (a)(3), (d) and (e) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Reserve Fund and Financial Agreement (described in § 298.35 of this part). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees or mortgage insurance under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to the Secretary, providing, among other things, that if any Title XI financing or advance by the Secretary to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness incurred by the Obligor and to any security interest obtained by the Secretary in that property or other property, with respect to the subsequent indebtedness.

(h) *Modified requirements.* The Secretary may waive or modify the financial terms or requirements otherwise applicable under §§ 298.13, 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. The Secretary may impose similar financial requirements on any Person providing other security for the Guarantees.

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9447, Mar. 8, 1985]

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* No Letter Commitment for guarantees shall be given by the Secretary without a finding that the proposed project, with respect to which the Vessel(s) is to be financed or refinanced under Title XI, will be economically sound.

(1) *Basic feasibility factors.* In making the economic soundness findings the Secretary shall consider all relevant factors, including, but not limited to:

(i) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) The market potential for the employment of the vessel over the life of the guarantee;

(iii) Projected revenues and expenses associated with employment of the vessel;

(iv) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(vi) Other relevant criteria.

(2) *Project Feasibility.* The applicant shall state in detail the purpose for the obligations to be guaranteed and shall supplement the application by exhibits deemed to be necessary. The applicant shall submit the following information to demonstrate the economic feasibility of the project over the Guarantee period.

(i) *Relevant market.* A written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(A) Nature and amount of cargo/passengers available for carriage and applicant's projected share (provide also the number of units; i.e., containers, trailers, etc.);

(B) Services or routes in which the Vessel(s) will be employed, including and itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency time, proposed number of annual sailings and number of annual working days for the Vessel(s);

(C) Suitability of the Vessel(s) for their anticipated use;

(D) Significant factors influencing the applicant's expectations for the future market for the Vessel(s), for example, competition, government regulations, alternative uses, and charter rates; and

(E) Particulars of any charters, contracts of affreightment, transportation agreements, etc. The narrative should be supplemented by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(F) The potential for purchasing existing equipment of a reasonable condition and age that may be available from existing Title XI Obligors, including information regarding—

(*1*) Market assessment concerning the availability and cost of existing equipment that may be an alternative to new construction;

(*2*) The cost of modification, reconditioning or reconstruction of existing equipment to make it suitable for intended use; and

(*3*) Descriptions of any bids or offers which the company had made to purchase existing equipment, especially Vessels which currently are financed with Title XI Obligations including date of offer, Vessels and amount of offer.

(ii) *Revenues.* A detailed statement of the revenues expected to be earned from the project based upon the information in paragraph (a)(2) of this section. The revenues shall be based on a realistic estimate of the Vessel(s) utilization rate at a breakeven rate for the project. A justification for the utilization rate shall be supplied and should indicate the number of days per year allowed for maintenance, drydocking, inspection, etc.

(iii) *Expenses.* A detailed statement of estimated daily vessel expense, including the following (where applicable):

(A) Wages, including staffing (submit itemized staffing schedule and wages, identifying the seamen's unions involved), and aggregated as to straight time, overtime and fringe benefits;

(B) Subsistence cost (indicate cost per person per day);

(C) Fuel cost (specify purchase ports), including estimated fuel consumption at design speed loaded and in port;

(D) Cost of stores, supplies and equipment, segregated as to Deck, Engine and Stewards Departments;

(E) Maintenance and repair cost at midlife of ship (specify in years) segregated as to voyage repairs, special surveys, drydocking and tailshaft removal, annual survey and structural renewals;

(F) Insurance costs, Hull and Machinery, Protection and Indemnity, War Risk and other (an insurance broker's estimate based upon current premium rates, if available, is considered preferable); and

(G) Other vessel expense (indicate items included).

(iv) *Estimated voyage expense:* These items shall include:

(A) Port expense segregated by port as to agency fees, wharfage and dockage and other port expenses;

(B) Cargo expense, segregated as to stevedoring and other cargo expense (show average cost per ton for loading and discharging for each port or geographic area);

(C) Brokerage expense, segregated as to freight and passenger; and

(D) Other voyage expense segregated as to canal tolls and other expense (indicate items included).

(v) *Owner's expenses annually.* These expenses shall be segregated as to:

(A) Interest and amortized principal on mortgage indebtedness;

(B) Estimated government Guarantee Fee; and

(C) Salaries and other administrative expenses (indicate basis of allocations).

(b) *Objective Criteria.* The Secretary shall make a finding of economic soundness with respect to each proposed project based on an assessment of the entire project. In order to be considered for approval, a project must meet the following criteria as determined by the Secretary:

(1) The projected long-term demand (equal to length of financing being requested) for the particular Vessel(s) to be financed must exceed the supply of similar vessels in the applicable markets, based on the Secretary's assessment of existing equipment, similar vessels under construction and the projected need for new equipment in that particular segment of the maritime industry. Such an assessment shall be determined by the Secretary's analysis of the following three elements:

(i) Conformity of the company's projections with supply and demand analyses prepared by the Maritime Administration;

(ii) Availability of charters, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) The applicant's existing market share compared with the market share necessary to meet projected revenues.

(2) A projected cash flow and net income, supported by the findings of paragraph (b)(1) of this section, that is sufficient to meet the projected Title XI debt service requirements and any other debt obligations of the company; and

(3) The internal rate of return analysis shall provide a minimum return of 10 percent when computed, based on the total project cost, and in accordance with paragraph (b)(4) of this section.

(4) The project shall have at least a ten percent (in real terms) internal rate of return using the following computation procedures:

(i) A detailed narrative description of the project. This description must present the following: The objectives of the project, e.g., what vessels will be constructed, reconstructed, or reconditioned, and how they will be used. It must also describe any other work to be done as part of the project, and any operating changes, including retirement of assets, which will accompany the investment. For these purposes, the project shall be deemed to include all expenditures (including those for which no Federal assistance is requested) necessary to carry out its objectives.

(ii) A detailed narrative description of the base case. The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., make no change in the current situation. In other cases, the applicant may take other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on vessels or equipment belonging to others. The applicant shall consider such alternative proposals as different ship designs, modification of existing vessels versus new equipment, and analysis of leasing versus direct ownership. If the applicant has considered more than one alternative action (requiring little or no investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(iii) A narrative discussion of key assumptions. All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much revenue is expected if the project or base case are undertaken, and where the difference, if any, between the project and base case is expected to come from. Other key assumptions may relate to actions by third parties, such as regulatory agencies. The applicant shall conduct a sensitivity analysis that takes into account the applicant's historical market share, past market fluctuations, availability of long-term charters, potential government actions, especially in areas of intended foreign operations.

(iv) A narrative discussion of each cash flow impact resulting from the project or base case. The applicant must identify all the cash receipts and disbursements resulting from the project but not the base case, and vice-versa. Cash flows which would be the same in either event should not be considered. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant must identify and discuss important costs and benefits which it has not been able to quantify. The applicant must note which of the benefit and cost items could be measured to confirm the predictions in the IRR computation, and must suggest how such measurements could be made. [Appendix A of this subpart lists the most common cash flow impacts of investment projects and base case alternatives, indicates the kinds of actions likely to involve a type of cash flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.]

(v) A discussion of the principal areas of uncertainty. This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. The applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(vi) For the project, (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I-V of Appendix B to this subpart shall be prepared and provided. State and local tax impacts need not be included in the computations, unless the applicant has determined that their inclusion substantially affects the IRR. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such case is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case.)

(A) *Step 1:* the applicant must determine, for each year of the project's expected useful life, up to a maximum of 25 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the required cash were immediately available at no cost.

(*1*) The various cash flow impacts for this Step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V, cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and, thus, the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(*2*) Capitalized investments which would occur as a part of the project but hot in the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other startup costs allowable in reporting to the IRS. The total investment for the project must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carry forward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments). A separate form should be completed for each such portion. Similarly, a set of Forms I must be completed for a capitalized investment which would be made as part of the base case but not the project.

(*3*) Sales of released assets (as useful assets or as scrap), which would occur as a part of the project or the base case, must be entered in Column I of Form II. As was the case for the capitalized investments there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue as asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue the asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternatives use, whether in the project or base case, should be entered of Form III rather than treated as a theoretical sale at a fair market value).

(B) *Step 2:* The applicant must compute the annual cash flows after Federal income tax corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credit from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. The average or effective tax rate (found by dividing firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pretax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(*1*) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow-through method, in which investment credits are generally treated as reductions in income tax expense of the year in which the credits are actually realized, rather than being deferred and amortized over the productive life of the acquired property.) Column 5 is the net after-tax cash flow associated with the investment.

(*2*) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding writdown of book value, Form II is not used, but For I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. Finally, Column 4 records the net cash flow in or out.

(C) *Step 3:* The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(*1*) For each year, the corresponding after-tax cash flow (Column 5 on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I as summed and entered into Column 2 of Form IV.

(*2*) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into Columns 3 and 4, respectively, of Form IV.

(D) *Step 4:* The applicant shall enter the operating income for the project and the base in Form III for each year of the project's life and shall determine and enter the after-tax cash flow. If the applicant excpects to pay no Federal income tax, columns three and four will be identical. If the applicant expects to pay taxes in some years but not others, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow. The aggregate net cash flow for the project relative to the base case is then found and entered on Form IV.

(E) *Step 5:* The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV. All estimates shall be in constant dollars.

(F) *Step 6:* The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. The applicant should furnish:

(*1*) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations, and

(*2*) A reconciliation between the cash flows used in the IRR computations and all forecasted data presented in the application, both before (for the base case) and after (for the project). This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

(5) That all prior Title XI advances shall have been paid.

[50 FR 9448, Mar. 8, 1985, as amended at 50 FR 33046, Aug. 16, 1985]

§ 298.15 Investigation Fee.

(a) *In general.* Prior to the issuance of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment. This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable) and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fees shall be due and payable.

(b) *Base Fee.* The investigation fee shall be one-half of one percent on obligations to be issued up to and including $10,000,000 and ⅛ of one percent on all obligations to be issued in excess of $10,000,000. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3 of this part) shall be credited against the investigation fee.

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9449, Mar. 8, 1985]

§ 298.16 Substitution of participants.

Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amendment by Pub. L. 92-507. A nonrefundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable, as follows:

(a) *Mortgage assignment.* A mortgagee applying for permission to assign an insured mortgage to another Person shall pay a fee of $1,500 to defray the costs of processing and reviewing the application.

(b) *Mortgage assumption.* Payment of $3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

§ 298.17 Evaluation of applications.

In evaluating project applications, the Secretary shall also consider whether the application provides for:

(a) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(b) The financing of the Vessel(s) within one year after delivery.

(c) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(d) The Guarantees extend for less than the normal term for that class of vessel.

[50 FR 9449, Mar. 8, 1985]

APPENDIX A—SELECTED CASH FLOW IMPACTS

Investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.

Labor requirements.

Requirements for trailers, and containers

Energy consumption.

Expenditures needed to meet legal requirements.

Salvage value.

While this list is not exhaustive it does identify the common cash flow impacts.

Some of the items listed are almost costs of projects or base cases, rather than benefits. Others, such as salvage items, however, may be either project or base case benefits or costs, depending on the particular situation.

USE OF ASSETS

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets.

Monetary Value: The value of an asset released by an action depends on what will be done with it. Depending on the particular circumstances, any of the following might be involved: Payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditures for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased.

In cases in which the asset is transferred to another use which provides income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

LABOR REQUIREMENTS

Characteristic Actions: Labor requirements are often reduced by automation or facility consolidation.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime hours, the wages and fringe benefits associated with that change directly affect the cash flow.

REQUIREMENTS FOR TRAILERS AND CONTAINERS

Characteristic Actions: Actions which change turnaround time.

ENERGY CONSUMPTION

Characteristic Actions: Actions changing efficiency.

Monetary Value: Found by multiplying the fuel by the current price per unit.

SALVAGE VALUE

Characteristic Actions: Acquisition of new assets or disposal of existing assets.

Physical Units: List of the particular assets involved.

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

EXPENDITURES NEEDED TO MEET LEGAL REQUIREMENTS

Characteristic Actions: Actions permitting abandonment of old vessels or equipment may reduce the need for such expenditures. New vessels may make some such expenditures unnecessary.

[50 FR 33050, Aug. 16, 1985]

APPENDIX B—FORMS TO BE USED IN COMPUTING IRR

Form I—Analysis of Capitalized Investment (Constant Dollars)

Applicant ______________________

Project______________________

Date ______________________

Sheet No. ______________________ of —

Portion of investment covered by this sheet

Depreciation method used ______________________

Depreciation Period ______________________

This investment would occur in the Project Base case (check one)

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

Instructions:

Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.

Estimate amounts in cols. 1–4 as would be done in reporting to IRS.

Col. 5 equals col. 3 plus col. 4 minus col. 1.

Form II—Analysis of Sale or Retirement of Assets (Constant Dollars)

Applicant ______________________

Project______________________

Date ______________________

Sheet

No.______________________

of ______________________

Assets covered by this sheet ______________

Depreciation method used ______________________

Depreciation period ______________________

Book value of assets at time of sale__________

This sale would occur in the Project Base case (check one)

Year	(1) Sale price	(2) Tax on gain (for tax saving on loss) from disposal	(3) Tax credit recapture	(4) Net cash flo in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions:

Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at differ times.

Estimate amounts in cols. 1-3 as would be done in reporting to the IRS.

Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Form III—Analysis of Operating Income

Applicant ______

Project______

Date ______

Sheet No. ______ of -

Year	(1) Operating revenues	(2) Operating expenses	(3) Pre-tax net operating income	(4) After-tax operating incom
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Form IV—Consolidation of Cash Flows (Constant Dollars)

Applicant ______

Project______

Date ______

Sheet

No.______

of ______

Year	Form I totals		Form II totals		Form III totals		(7) Net cash flo in (out)
	(1) Project	(2) Base case	(3) Project	(4) Base case	(5) Project	(6) Base case	
1							
2							
3							
4							
5							

Year	Form I totals		Form II totals		Form III totals		(7) Net cash flow in (out)
	(1) Project	(2) Base case	(3) Project	(4) Base case	(5) Project	(6) Base case	
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Totals							

Instructions: Cols. 1 through 5 are found by summing the right most columns on the indicated forms.

Form V—Computation of IRR (Constant Dollars)

Applicant ____________

Project____________

Date ____________

Sheet

No.____________

of ____________

Year	(1) Cash flow	Present value		
		(2) Value factor at 10 pct	(3) Value factor at 25 pct	(4) Value factor at 40 pct
1		0.909	0.800	0.714
2		.826	.640	.510
3		.751	.512	.364
4		.633	.410	.260
5		.621	.328	.186
6		.564	.262	.133
7		.513	.210	.095
8		.467	.168	.068
9		.424	.134	.048
10		.386	.107	.035
11		.350	.086	.025
12		.319	.069	.018
13		.290	.055	.013
14		.263	.044	.009
15		.239	.035	.006
Total				

Present Value of Cash Flow Stream

IRR=________

Instructions:

1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.

[50 FR 33050, Aug. 16, 1985]

Subpart C—Guarantees

§ 298.20 Term, redemptions and interest rate.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, not exceeding the anticipated physical and economic life of the Vessel or Vessels. Such maturity date may be less than but in no event more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees; and

(3) The later of twenty-five years from the date of original delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the re-

maining useful life of the Vessel, as determined by the Secretary.

(b) *Required redemptions.* Where multiple Vessels are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation of a stated maturity must be determined by the Secretary to be reasonable, taking into account the range of interest prevailing in the private market for similar loans and the risks assumed by the Secretary.

§ 298.21 Limits.

(a) *Actual Cost basis.* The amount of Obligations to be issued shall be satisfactory to the Secretary based upon the economic soundness of the transaction. Such amount may be less than but in no event more than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels. If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard with respect to such horsepower shall be continuous rated horsepower. Where existing debt is being refinanced, pursuant to section 1104(a)(4) of the Act, the amount of new Obligations issued in respect to such existing debt may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) Seventy-five or 87½ percent whichever is applicable, of the Depreciated Actual Cost of the Vessel with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel construction costs such as designing, engineering, constructing (including performance bond premiums approved the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually specified in Vessel construction contracts, e.g., changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid on subordinated debt considered to be Equity, and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. In approving Actual Cost the Secretary will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Federal documentary tax stamps;

(8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;

(9) Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act and § 298.36 of this part;

(10) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;

(11) The cost of the condition survey required by § 298.11(d) of this part and all work necessary to meet the standards set forth therein;

(12) The cost to the Shipowner of a Vessel which is to be reconstructed or reconditioned, e.g., cost of acquisition or repair work; and

(13) Generally not include any amount payable to the shipyard for early delivery of the Vessel.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34 of this part), and prior to the final Actual Cost determination for each Vessel, the applicant shall submit to the Secretary documents substantiating all claimed costs eligible under § 298.21(b). These documents may include but need not be limited to copies of invoices, change orders, subcontracts and, where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions contained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by the Secretary. The Secretary must subsequently approve the amount of escalation claimed by the applicant as Actual Cost.

(f) *Moneys received in respect of construction of the Vessels.* If the Obligor or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect to construction of a Vessel (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, the Obligor shall give written notice of such fact to the Secretary. So long as the Guarantees have not been paid by the Secretary, the Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel owner of liquidated damages for late delivery of the Vessel. If the Secretary shall have paid the Guarantees, the Obligor or other recipient shall promptly pay these moneys including any liquidated damages to the Secretary for deposit into the Federal Ship Financing Fund.

(g) *Depreciated Actual Cost.* After a Vessel has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel.

[43 FR 60912, Dec. 29, 1978, as amended at 51 FR 7796, Mar. 6, 1986]

§ 298.22 Amortization of Obligations.

Generally after Vessel delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(1) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity; or

(2) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity.

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Sections 1104(a) (1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel, the proceeds of such Obligations shall be applied to the construction, reconstruction or reconditioning of other vessels or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in Subpart B of this part.

[50 FR 9449, Mar. 8, 1985]

§ 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction, or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

§ 298.25 Financing repayment of construction-differential subsidy.

The Secretary may approve Guarantees with respect to Obligations secured by one or more Vessels and issued to finance the repayment to the United States of the whole or any part of construction-differential subsidy (CDS) which has been paid under the provisions of Title V of the Act. The repayment of CDS may be related to Vessel operation in domestic trade within the meaning of section 506 of the Act, or any other purpose authorized by the Secretary.

§ 298.26 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligee of interest, or other compensation for services which have not been performed in a manner that such compensation or payment is being provided as interest in excess of the rate approved by the Secretary; or

(b) Grants of security to an Obligee in addition to the Guarantees.

§ 298.27 Lease payments.

If payment of principal and interest on Obligations would in any way be dependent upon the lease or charter hire payments for a Vessel that is security for the Obligations, the amount and conditions of lease or charter payments shall be subject to the Secretary's approval.

§ 298.28 Advances.

(a) *In general.* In accordance with the provisions of section 207 and Title XI of the Act, the Secretary shall have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including but not limited to, principal, interest, insurance and other vessel-related expenses or fees. Such advances or payments shall be made only to protect, preserve or improve the collateral held as security by the Secretary to secure Title XI debt. The applicant making the request for an advance shall demonstrate (with market and cash flow analyses and other projections) that its problems are of a short term duration (less than two years) and that with the help of an advance(s), the applicant would be assisted over its temporary difficulties. In making or committing to make an advance or payment of funds the Secretary shall evaluate the following:

(1) *Company finances.* The applicant shall clearly demonstrate that it has insufficient cash flow, working capital or other financial resources to make the payment and has made a good faith effort to arrange for a transaction acceptable to the Secretary to provide the necessary commercial funding for the payment. Further, the Secretary shall consider the following factors, among others:

(i) The existing financial condition of the Obligor, including the likelihood of liens being filed by creditors;

(ii) The reason for the financial difficulties of the Obligor and whether the problems are the result of economic conditions or actions of the Obligor or both;

(iii) The reasonableness of the financial projections for the Obligor and the expectation that the Obligor's operations will recover; and

(iv) The extent to which company management has taken action to alleviate the difficulties leading to the need for advances.

(2) *Collateral.* There shall be adequate security for the advance. In determining adequate security the Secretary shall evaluate, among other things:

(i) The existing and future market conditions for the Vessel(s) held as collateral after consideration of all potential liens and claims;

(ii) The benefit of preserving the existing Obligations on the collateral; and

(iii) Any other available collateral (i.e., mortgages on other vessel(s), special escrow funds, pledge of stock, charters, contracts, notes, letters of credit, accounts receivable assignments and guarantees).

(3) *Repayment.* The company must have the capacity to repay the advances in a timely manner as well as meeting the other financial obligations imposed as a condition of the advance. The terms of repayment of an advance shall be satisfactory to the Secretary. In determining the Obligor's ability to meet the foregoing the Secretary shall evaluate, among other things:

(i) The expectation of repayment of the advance;

(ii) The ability and willingness of the Obligor to repay the advance on a short-term basis; and

(iii) The Obligor's experience in repaying any prior advance.

(b) *Terms of advance.* The terms of an advance shall be satisfactory to the Secretary and shall include, but not necessarily be limited to:

(1) The interest rate shall be equal to the greater of—(i) the sum of the effective interest rate borne by the Obligations and a Guarantee Fee computed in accordance with § 298.36; or (ii) the sum of the interest rate the Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and an amount equal to the Guarantee Fee provided in accordance with paragraph (b)(6) of this section.

(2) The advance may have a maturity date no later than that of the Obligation(s).

(3) Unless the Secretary otherwise requires, the advance shall have periodic payments of principal and interest, payable to the extent practicable, on the same dates as that of the Obligation(s) with the right of prepayment at any time without premium.

(4) As long as any advance is outstanding, no dividends can be paid without prior written consent of the Secretary provided, however, that if the Obligation(s) and advance(s) are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(5) The advance, both as to principal and the interest relating to the advance of principal, shall be secured by the mortgage and/or other such collateral as the Secretary shall deem appropriate.

(6) As a further condition of the advance, the guarantee fee required to be paid by the Obligor on the outstanding Title XI obligations relating to the advance shall be at the rate of one percent, until such advance is repaid.

(c) *Filing requirements.* Any company that desires to request an advance or other payment, or a commitment to make an advance or other payment from the Secretary for the purposes stated in § 298.28 of this part, shall apply for such assistance as far in advance as is reasonably possible. A request for an advance for principal and interest payments shall be received by the Secretary at least 30 days prior to the initial payment date. A request for an advance of insurance payments shall be received by the Secretary at least 30 days prior to a renewal or termination date. The Secretary may consider requests for assistance with less notice, upon written documentation of extenuating circumstances. Any requests for assistance must be accompanied by supporting data with respect to the need for the advance, that financing assistance has been sought from other sources, that the company is taking and has taken measures to alleviate its situation, financial projections, proposed term of the repayment, current and projected market conditions, information on other available collateral, liens and other creditor information, and any other information which may be requested by the Secretary.

[50 FR 9450, Mar. 8, 1985]

Subpart D—Documentation

§ 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper shall include on its face the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Guarantee of the United States, authenticated by the Indenture Trustee. If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to, time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

§ 298.31 Mortgage.

(a) *In general.* Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of security interest in one or more Vessels, in favor of the Secretary. During construction of a new Vessel, the security interest may be perfected by a filing under the Uniform Commerical Code or by the recording of any form of mortgage in a jurisdiction where the Uniform Commercial Code has not been enacted. The Security Agreement shall provide that upon delivery of the new Vessel, or at the time Guarantees are issued with respect to an existing Vessel, a Preferred Mortgage shall be executed in favor of the Secretary. The Preferred Mortgage shall be filed with the United States Coast Guard at the Vessel's home port and shall be delivered to the Secretary after being recorded.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to the Secretary by the Obligor. If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage shall be executed upon delivery of the first vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to the Secretary's Mortgage lien. The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage. The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. The Secretary may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), with respect to all related Obligations, as deemed necessary to maintain adequate security for the Guarantees. Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid, unless the Secretary shall otherwise determine that there remains adequate security for the Guarantees, and the Vessel shall be discharged from the Mortgage lien.

(c) *Adequacy of collateral.* Under normal circumstances, a First Preferred Mortgage on the Vessel(s) will be adequate security for the Guarantees. If, however, the Secretary determines that the Mortgage on the Vessel(s) in not sufficient to provide adequate security, the Secretary, as a condition to approving the Letter Commitment or processing the application may require additional collateral, such as a mortgage(s) on other vessel(s) or on other assets, special escrow funds, pledges of stock, charters, contracts, notes, letters of credit, accounts receivable assignments, and guarantees.

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9450, Mar. 8, 1985; 54 FR 14813, Apr. 13, 1989]

§ 298.32 Required provisions in Documentation.

(a) *Performance under shipyard and related contracts.* Generally, shipyard and related contracts shall contain provisions for:

(1) Furnishing by the shipyard of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard demonstrates to the satisfaction of the Secretary that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel, as well as all related work projects being performed by the contractor and subcontractors, to a representative of the Secretary, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel is being constructed, reconstructed or reconditioned in accordance with contract plans and specifications approved by the Secretary;

(3) Submitting to the Secretary, upon request, one set of selected microfilm of shipyard plans for the Vessel as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard in a form acceptable to the Secretary, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard and a representative of the Secretary as to each payment;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless the Secretary consents in writing to such use; and

(6) Requiring the use in Vessel construction of only articles, materials and supplies of the growth, production or manufacture of the United States, as described in detail in § 298.11(a) of this part. If Obligations will not be issued during the period of construction of a Vessel, shipyard and related contracts should generally includes the provisions specified in paragraphs (a) (2), (3) and (6) of this section.

(b) *Assignments and general covenants from Obligor to Secretary.* The Obligor shall assign rights and shall covenant with the Secretary, as required by the Secretary, including, but not limited to, the following:

(1) Assignment of all or part of the right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due with respect to Vessel construction;

(3) Assignment, where applicable, of all or a part of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel and all hire payable to the Obligor, and delivery to the Secretary of required consents by

appropriate parties to any such assignments;

(4) Covenants relating to the annual filing of satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR Part 355; warranty of Vessel title free from all liens other than those specifically excepted; maintaining United States registry of the Vessel; compliance with the provisions of 46 U.S.C. 31301-31343; Notice of Mortgage, payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountants;

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish to the Secretary a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified or independent licensed public accountants unless otherwise verified by the Secretary; and

(ii) Costs of American and foreign materials (including services);

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the Vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery, and Protection and Indemnity coverages underwritten by the Maritime Administration as authorized by Title XII of the Act; and such additional insurance as may be required by the Secretary. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by the Secretary by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by the Secretary through marine insurance brokers and/or underwriting agents approved by the Secretary. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by the Secretary and/or under such other forms of policies which the Secretary may approve in writing and/or policies issued by or for the Maritime Administration insuring the Vessel against the usual risks provided for under such forms, including such amounts of increase value other forms of "total loss only" insurance permitted by the Hull and Machinery insurance policies; and

(7) Collateralize other debt due to the Secretary under other Title XI financings.

[43 FR 60912, Dec. 29, 1978, as amended at 54 FR 14813, Apr. 13, 1989]

§ 298.33 Escrow Fund.

(a) *Circumstances requiring deposits.* The Obligor may be required to establish a fund with the Secretary (Escrow Fund) in accordance with section 1108(a) of the Act and the Security Agreement. The deposit with the Secretary shall be in cash or Federal Reserve Bank funds.

(b) *Principal Deposit-Single Vessel.* If a single Vessel is security for the Guarantees, the deposit of principal shall be calculated by subtracting from the aggregate principal amount of the Obligations sold, 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations.

(c) *Principal deposit—multiple Vessels.* If multiple Vessels are security for the Guarantees, with the Secretary's approval, the Obligor may calculate the aggregate deposit of principal amount in the Escrow Fund (i) by computing on an individual Vessel basis by prorating the proceeds of the sale of Obligations, within the meaning of the proviso in section 1108(a) of the Act, based on the ratio of the Vessel's Actual Cost or Depreciated Actual Cost, to the total Actual Cost and Depreciated Actual Cost of all

Vessels which are security for the Guarantees less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of deposit, by or for the account of the Obligor for the construction, reconstruction or reconditioning of the Vessel for which the deposit is being computed or (ii) by allocating portions of the proceeds (up to 75 or 87½ percent, whichever is applicable under section 1104(b) of the Act) from the sale of the Obligations to specific Vessels and computing the deposit based on the Actual Cost or Depreciated Actual Cost of such Vessels paid, as of the date of deposit, by or for the account of the Obligor. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations. The foregoing allocations are for the purpose of calculating the deposits only and are not applicable or controlling with respect to disbursements from the Escrow Fund.

(d) *Interest deposit.* Interest on the aggregate principal amount deposited pursuant to paragraphs (b) and (c) of this section, shall be computed at the same rate borne by the Obigations, for one interest payment period, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighted average of such interest rates. The calculation of the amount of interest to be deposited shall take into account the principal and interest, if any, remaining on deposit in the Escrow Fund.

(e) *Disbursements prior to Termination Date.* Unless the Guarantees shall become payable prior to the Termination Date (described in paragraph (h) of this section) of the Escrow Fund, the Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, and within a reasonable time after written request from the Obligor, make disbursements from the fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery or redelivery, and to the shipbuilder, the Obligor or to any other Person entitled thereto, with respect to costs included in Actual Cost. Also, the Secretary may disburse to the Obligor, upon request made at least 10 business days prior to, and no later than 30 days after the date on which the payment of interest on the Obligations is due, any excess, as determined by the Secretary, of required interest on deposit in the Escrow Fund on the date of disbursement. However, no payment or reimbursement shall be made from the Escrow Fund to any Person until:

(1) The Construction Fund (described in § 298.34 of this part), where provided for in the Security Agreement, has been exhausted;

(2) At least 12½ or 25 percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel for which the disbursement is requested has been paid by or for the account of the Obligor from sources other than the proceeds of the Obligations, except that where the Obligor is required to pay in 25 percent of the Actual Cost or Depreciated Actual Cost, and demonstrates to the Secretary's satisfaction the ability to pay in such 25 percent, after the Obligor has paid the first 12½ percent of the Actual Cost or Depreciated Actual Cost, the Obligor may be permitted to withdraw moneys from the Escrow Fund, for payment of the next 37½ percent of such Actual Cost or Depreciated Actual Cost, and withdraw the remainder of the Escrow Fund moneys after paying in the next 12½ percent of Actual Cost or Depreciated Actual Cost; and

(3) The Secretary has approved the Actual Cost items and has determined that the amounts for which reimbursement is requested have been paid and that there has been satisfactory certification as to the percentage of completion of the Vessel or Vessels, at least equal to that amount of Actual Cost paid, except where the Secretary

has specifically consented to an alternative procedure.

(f) *Where Guarantees become payable.* If, prior to the Termination Date of the Escrow Fund, the Guarantees shall become payable by the Secretary, all amounts in the Escrow Fund at such time (including interest and realized income which have not yet been paid to the Obligor) shall be paid into the Federal Ship Financing Fund, created by section 1102 of the Act, and be credited against any amounts due or to become due to the Secretary from the Obligor with respect to all Guarantees, and to the extent not so required, be paid to the Obligor.

(g) *Requisition of title, termination of construction contract or total loss of Vessel.* In the event of requisition of title to or seizure or forfeiture of the Vessel, termination of the construction contract (unless the Obligor and the Secretary elect to have the Vessel completed) or the construction-differential subsidy contract (where applicable), or the actual or constructive total loss of the Vessel, all moneys remaining on deposit in the Escrow Fund may be disbursed by the Secretary for any of the following purposes:

(1) Redemption or payment of Obligations and accrued interest thereon to the date of redemption or payment, in accordance with the applicable provisions of the Documentation relating to such redemption or payment, where there is no existing default;

(2) Payment to the Obligor, if all outstanding Obligations are retired and paid other than by payment of the Guarantees, and all amounts payable to the Secretary and secured by the Mortgage have been paid; and

(3) Payment in accordance with the priorities set forth in § 298.41 of this part, if a default has occurred and if the Secretary shall have paid the Guarantees.

(h) *Disbursement upon Termination Date.* The Escrow Fund shall terminate on a date agreed upon by the Obligor and the Secretary as set forth in the Security Agreement (Termination Date). If on such Termination Date the full amount of Actual Cost of the Vessel has not been paid by or for the account of the Obligor, or is not then due and payable, the Obligor and the Secretary may extend the Termination Date by agreement. When the Secretary makes a final determination of Actual Cost at the written request of the Obligor, or at the instance of the Secretary if the Termination Date has occurred without such a request, the Termination Date shall be deemed to be the date of such final determination of Actual Cost. If payments under the Guarantees have not become due prior to the Termination Date, then on or immediately after said Termination Date, any balance in the Escrow Fund shall be disbursed by the Secretary in the following manner:

(1) Where the principal amount of the Obligations issued less the principal amount of Obligations which have been retired or paid on or before such Termination Date, and not availed of as a credit against any mandatory redemptions otherwise required to be made on or before such Termination Date, shall be in excess of 75 or 87½ percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel as finally determined by the Secretary as of the Termination Date, the Secretary shall pay such excess to the Indenture Trustee in accordance with the provisions of the Documentation relating to such payment. A written notice from the Secretary and the Obligor shall accompany such payment, stating the Termination Date and directing the Indenture Trustee to redeem an equal amount of Obligations;

(2) From the balance remaining after the deduction of the principal amount of the Obligations to be redeemed, an amount equal to interest accrued to the date fixed for redemption of the principal amount of Obligations to be redeemed shall be simultaneously paid from the Escrow Fund by the Secretary to the Indenture Trustee to be applied to the payment of interest to the date to be fixed for redemption. In the event the balance remaining in the Escrow Fund after giving effect to paragraph (h)(1) of this section, is insufficient to pay the interest accrued to the date fixed for redemption, such balance shall be paid from the Escrow Fund to the Indenture Trustee and the Obligor shall simultaneously deposit with the Inden-

ture Trustee an amount equal to the difference between the balance being paid to the Indenture Trustee from the Escrow Fund and the total amount required for the payment of accrued interest; and

(3) Any balance of the Escrow Fund shall be paid to the Obligor.

(i) *Investment and liquidation of the Escrow Fund.* The Secretary may invest and reinvest deposits to the Escrow Fund in securities which are obligations of the United States and with maturities such that sufficient cash will be reasonably available to the Escrow Fund as required to make periodic authorized disbursements. The Secretary shall deposit the Escrow Fund into a special Treasury Department account with instructions, pursuant to an agreement with the Obligor, for the investment, reinvestment and liquidation of the Escrow Fund.

(j) *Income on the Escrow Fund.* If the Guarantees shall not have become due, after receiving notice that the Treasury Department has deposited income earned on the Escrow Fund into the special account, the Secretary shall direct the payment of such income to the Obligor. Income shall include the excess of the cash received from the sale of securities or the payment of securities at maturity (less any losses from the sale of securities not made up by payments by the Obligor pursuant to provisions of the Security Agreement) over the cost thereof, and interest received with respect to the securities.

(k) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Escrow Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Escrow Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Escrow Fund.

§ 298.34 Construction Fund.

(a) *Deposit.* Where the Security Agreement provides for an Escrow Fund deposit, usually a provision shall also be included therein for establishing Construction Fund deposits. Under the terms of this provision, at the time of each sale of Obligations the Obligor shall deposit with a Depository, in a special account subject to the joint control of the Obligor and the Secretary, cash equal to the principal amount of the Obligations issued at such time less the sum of (1) the aggregate principal amount then required to be in the Escrow Fund and (2) the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e) of this part) which the Secretary determines has been paid by or for the account of the Obligor. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery, and to the shipbuilder, the Obligor, or to any other Person entitled thereto with respect to costs included in Actual Cost. The Secretary shall not authorize any disbursement from the Construction Fund unless payments have been made by or for the account of the Obligor from sources other than the Obligations, in accordance with the requirements of paragraphs (2) and (3) of § 298.33(e).

(c) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Construction Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Construction Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Construction Fund.

§ 298.35 Reserve Fund and Financial Agreement.

(a) *Purpose.* In order to provide further security to the Secretary and to insure payment of the interest and principal due on the Obligations, the Company shall be required to enter into a Title XI Reserve Fund and Financial Agreement (Agreement) at the first Closing at which Obligations are issued. The Secretary may waive or modify provisions of the Agreement based on an evaluation of the aggregate security for the Guarantees.

(b) *Financial Covenants for Companies meeting primary financial requirements.* Covenants shall be imposed on the Company which is subject to compliance with the primary financial requirements at Closing, set forth in § 298.13(d), as follows:

(1) *Continuous covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Enter into a service, management or operating agreeement with respect to a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of charter or contract,

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in new business activities not directly connected with marine operations or guarantee (or otherwise be liable for) debts of other Persons.

(iv) Pay any dividend except as may be permitted by paragraph (b)(1)(iv)(A) or (B) of this section. If the Company is party to an operating-differential subsidy contract, the payment of dividends is subject to the provisions of § 298.35(g).

(A) From retained earnings in an amount specified in paragraph (b)(1)(iv)(C) of this section providing that the year in which the dividend is paid there is no operating loss in the current fiscal year to the date of the payment of the dividend and (*1*) there was no operating loss in the immediate preceding three fiscal years, or (*2*) there was a one year operating loss during the immediate preceding three fiscal years and (*i*) such loss was not in the immediate preceding fiscal year and (*ii*) there was positive net income for the three year period.

(B) If dividends are not payable under paragraph (b)(1)(iv)(A) of this section, a dividend can be paid in an amount equal to the total operating net income for the immediate preceding three fiscal year period provided that (*1*) there were no two successive years of losses, (*2*) in the year in which the dividend is paid there is no operating loss in such fiscal year to the date of payment of the dividend, and (*3*) the dividend paid would not exceed an amount specified in paragraph (b)(1)(iv)(C) of this section.

(C) Dividends may be paid from earnings of prior years in an aggregate amount equal to (*1*) 40 percent of the Company's total net income after tax for each of the prior years, less any dividends that were paid in such years or (*2*) the aggregate of the Company's total net income after tax for such prior years, providing that after the payment of such dividend, the Company's long term debt does not exceed its net worth. In computing net income extraordinary gains, such as gains from the sale of assets, etc., shall be excluded.

(2) *Additional Covenants which may become applicable.* If the Company shall at any time no longer satisfy the primary financial requirements, or such condition would occur after giving effect to any of the proposed transactions set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, covert capital into debt, make distributions, or pay any dividends, provided however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by § 298.35(g);

(ii) Make loans, advances, investments in or repayments of existing debts to Affiliates, stockholders, officers or directors;

(iii) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified by the Secretary in the Agreement;

(iv) Pay salaries in excess of amounts specified in the Agreement, pay subordinated indebtedness or make loans; or

(v) Invest in securities other than those that qualify as eligible investments under the Agreement.

(c) *Financial Covenants for Companies meeting the special financial requirements.* Covenants shall be imposed on the Company which is subject to the special financial requirements at Closing, set forth in § 298.13(e), as follows:

(1) *Continuous covenants.* So long as the Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions, prohibited by the Documentation, which actions include but are not limited to those of the following nature.

(i) Enter into a service, management or operating agreement for a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of Charter or Contract.

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in any new business activities not directly connected with marine operations or guarantee (or otherwise become liable for) debts of other Persons;

(iv) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified for the Secretary in the Agreement;

(v) Make any loans or invest in any securities other than Eligible Investments for Title XI Reserve Fund; or

(vi) Pay any subordinated indebtedness other than in accordance with a subordination agreement approved by the Secretary.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the special financial requirement (after including the annual financial liability relating to the Obligations as a current liability in computing Working Capital), or such condition would occur after giving effect to any proposed transaction set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, make distributions, or pay any dividend, provided however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by § 298.35(g);

(ii) Make loans, advances, investments or prepayments of existing debts to Affiliates, stockholders, officers or directors, or invest in the securities of any Affiliate; or

(iii) Pay salaries in excess of amounts specified in the Agreement.

(3) *Covenants where Company's financial condition improves to meet primary financial requirements.* Whenever the Company, based on a review of its financial position, determines that it meets the primary financial requirements set forth in § 298.13(d), it may inform the Secretary of this fact, and submit such financial statements and all additional information which the Secretary shall consider necessary to verify compliance with such financial requirements. With the consent of the Secretary, the Company may elect thereafter to be subject to covenants applicable to a Company which had satisfied the pri-

mary financial requirements at Closing.

(d) *Title XI Reserve Fund Net Income.* The Agreement shall provide that within 105 days after the end of its accounting year, the Company shall compute its net income attributable to the operation of one or more Vessels that were constructed, reconstructed, reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation utilizes a ratio expressed as a percentage, and applies this percentage to the Company's total net income after taxes. The numerator of the ratio shall be the total original capitalized cost of all Company Vessels (whether leased or owned) which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(e) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the primary financial requirements set forth in § 298.13(d), the Company shall make one or more deposits to a special joint depository account with the Secretary (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, shall be determined as follows:

(1) If the Company is the owner of the Vessel, an amount (pro rated for a period of less than a full year) that is equal to 10 percent of the Company's aggregate original equity investment in the Vessel or Vessels shall be deducted from Title XI Reserve Fund Net Income.

(2) Fifty percent of the Title XI Reserve Fund Net Income adjusted where applicable, in accordance with paragraph (e)(1) of this section shall be deposited into the Title XI Reserve Fund.

(3) There shall also be deposited any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the documentation to which the Company is a party.

(4) Irrespective of the Company's deposit requirement, as stated in preceding paragraphs (e) (1) through (3) of this section, the Company shall not be required to make any deposits into the Title XI Reserve Fund if any of the following events shall have occurred:

(i) The Company shall have discharged the Obligations and related Secretary's Note and shall have paid other sums secured under the Security Agreement and Preferred Mortgage.

(ii) All Guarantees with respect to outstanding Obligations shall have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(f) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF) pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company shall enter into an agreement, satisfactory to the Secretary, providing that all such deposits of assets therein shall be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount shall be subject to the Secretary's prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

(g) Dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract. (Reserved)

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9451, Mar. 8, 1985]

§ 298.36 Annual Guarantee Fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel, the Secretary shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of a Vessel, the Guarantee Fee shall be imposed at an annual rate of not less than ½ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt of the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The Guarantee Fee rate shall be subject to annual redetermination by the Secretary in accordance with the tests set forth in paragraphs (c) and (d) of this section, and the Secretary shall promptly give notice to the Obligor of a rate change for such annual period. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the credit source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel delivery.* For annual periods beginning prior to the delivery date of a Vessel being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅜ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual

Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel delivery.* For annual periods beginning on or after the Vessel delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt but less than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ¾ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅝ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* The Initial Guarantee Fee covering the 12-month period commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The Guarantee Fee for each subsequent annual period must be paid to the Secretary at least 65 days prior to each anniversary of said payment. The Secretary shall refund the prepaid Guarantee Fee if the Guarantees shall have terminated, other than by reason of default, prior to the anniversary date.

(f) *Adjustment of Guarantee Fee.* If the Secretary at any time determines that the amount of any Guarantee Fee should be adjusted for any reason, the Secretary shall promptly give written notice thereof, specifying the correct amount, the basis for computation thereof and the amount of the deficiency or excess. With respect to any deficiency, payment shall be made to the Secretary within 30 days after receipt of such notice. Any excess payment shall, except if any default has occurred and has not been cured, be refunded by the Secretary. If such refund is $100 or less, it shall be applied as a credit against future payments unless a specific request for such refund is made to the Secretary.

(g) *Increase in Guarantee Fee due to Security Default.* If a Security Default as described in § 298.40(c) of this part shall have occurred and be continuing, the Secretary, after giving written notice to the Obligor of such Security Default, may increase the existing Guarantee Fee rate, if less than the maximum allowed under paragraph (a) of this section, to the maximum rate at the expiration of 60 days after receipt of notice by the Obligor, except if the Obligor shall have cured such Security Default or the Secretary shall have waived the Security Default during the 60-day period.

(h) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate

of the amounts calculated for each Vessel.

(i) *Interest on late payment of Guarantee Fees.* The Secretary shall charge the Obligor interest computed at a rate equal to the prevailing rate on one-year Treasury Obligations as of December 31 of the preceding year (computed on the basis of a 365 day calendar year) with respect to the annual guarantee fee for each day following the 55th day specified in § 298.36(e) during which payment of such fee has not been received by the Secretary.

§ 298.37 Examination and audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel, as well as records of Affiliates and domestic agents connected with such Persons, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel with respect to which Guarantees or an insurance contract is in force. When a Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

§ 298.38 Partnership agreements.

Partnership agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basis areas: (a) Duration of the partnership, (b) adequate partnership funding requirements and mechanisms, (c) dissolution of the partnership and the withdrawal of a general partner and (d) the termination, amendment, or other modification of the partnership agreement without the prior written consent of the Secretary.

[50 FR 9451, Mar. 8, 1985]

§ 298.39 Exemptions.

The Secretary may exempt an applicant from any requirement of this Part not required by law, in exceptional cases, on written findings that: (a) The case materially involves factors not considered in the promulgation of this part; (b) (1) a national emergency makes it necessary to approve the exemption or (2) the financial liability of the United States will be substantially relieved; (c) the exemption will not substantially affect effective regulation of the Title XI program, consistent with the objectives of this part; and (d) exemption will not be unjustly discriminatory.

[50 FR 9451, Mar. 8, 1985]

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment Default.* In the case of any default in the payment of principal or interest with respect to the Obligations, the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter.

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines that a Payment

Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand, make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* After a default has occurred and is continuing and before making payment required under the Guarantees, the Secretary may take the Vessel and hold, lease, charter, operate or use the Vessel, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreements;

(2) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(3) All advances, including interest thereon, by the Secretary, pursuant to the Security Agreement and all reasonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note; and

(6) To the extent of any collateralization by the Obligor of other debt due to the Secretary from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c) (1) through (6) of this section.

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 9451, Mar. 8, 1985]

§ 298.42 Reporting requirements—financial statements.

The accounts of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970. The accountants performing such audits may be the regular auditors of the Company.

(a) *Reports of Company and other Persons.* Except as otherwise required by the Secretary, the Company shall file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with the Maritime Administration as specified in the Documentation. Included shall be the balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period, a statement of income for the period and any other statement that the Secretary shall consider necessary to accurately reflect the Company's financial condition and the results of its operations. By letter to the Company, the Secretary shall specify the form required for reporting and the number of copies to be submitted. The Secretary may, by notice to the Company, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects the Secretary's security for the Guarantees. The required financial report for the annual period shall be due within 105 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report shall be due within 105 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement. The annual and semiannual reports, respectively shall be in the form prescribed or approved by the Secretary. The annual report shall be certified by the public accountants after audit. Certification of the semiannual report by the accountants may be required by the Secretary. Where independent certification is not required, a responsible corporate officer shall attach a certification that such report is based on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(b) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the Vessels, the requirements for annual and semiannual accounting reports of the Obligor may be modified accordingly by the Secretary.

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which information shall state the term for which the insurance is in force.

[43 FR 60912, Dec. 29, 1978, as amended at 50 FR 33050, Aug. 16, 1985]

§ 298.43 Applicability of the Regulations.

The regulations in this part shall be in effect as to all Letter Commitments, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under Part 298 of this title (43 FR 60912) as of the effective date hereof, but shall not affect any Letter Commitments, commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Letter Commitments, guarantees, insurance contracts, commitments for Guarantees or Documentation.

[50 FR 9451, Mar. 8, 1985]

Subpart F—Administration [Reserved]

SUBCHAPTER E—[RESERVED]

SUBCHAPTER F—POSITION REPORTING SYSTEM

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

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307.3 Definitions.
307.5 Provisions of General Applicability.
307.7 Information Required in Report.
307.9 When to Report.
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307.13 Where to Report.
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307.17 Distress Messages and Hostile Action Reports.
307.19 Penalties.

AUTHORITY: Secs. 204(b), 212(A), 1203(a), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1122(a), 1283)); Pub. L. 97-31; 46 CFR 1.66.

SOURCE: 51 FR 18329, May 19, 1986, unless otherwise noted.

§ 307.1 Purpose.

This part establishes that operators of U.S.-flag oceangoing vessels in U.S. foreign trade and certain foreign-flag vessels as described in 46 U.S.C. 1283 must report on their locations according to the provisions of this regulation to enhance the safety of vessel operations at sea and provide a contingency for events of national emergency.

§ 307.3 Definitions.

As used in this part:

(a) "Administrator" means the Maritime Administrator of the Department of Transportation.

(b) "MARAD" means the Maritime Administration, Department of Transportation.

(c) "Coast Guard" means the United States Coast Guard, Department of Transportation.

(d) "AMVER" means the Automated Mutual-Assistance Vessel Rescue System operated by the U.S. Coast Guard as it applies to U.S.-flag ships and certain non-U.S.-flag ships in U.S. foreign commerce under this regulation.

§ 307.5 Provisions of General Applicability.

(a) The following operators must comply with the reporting requirements contained in this part:

(1) Operators of United States-flag vessels of one thousand gross tons or more, operating in the foreign commerce of the United States.

(2) Operators of foreign-flag vessels of one thousand gross tons, or more, for which an Interim War Risk Insurance Binder has been issued under the provisions of Title XII, Merchant Marine Act, 1936, as amended (46 U.S.C. 1281 *et seq.*).

(b) Operators of other merchant vessels may choose to submit reports and have voyage information forwarded to MARAD, when approved by the Coast Guard and MARAD. Information voluntarily provided by them will be released by Coast Guard only for safety purposes or to satisfy certain advance notification requirements of 33 CFR Part 160. Requests should be addressed to the Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Attn: MAR-742.

§ 307.7 Information Required in Report.

(a) *Types of Reports.* Reports on vessel departure, arrival, position and deviation are required under this part. Sailing plans are optional, and may be sent prior to departure, or may be combined with departure reports.

(b) *Report Content.* Content of each type of required report are specified below. Note that the word "MAREP" must be included in the text of each message if MARAD is to receive the information.

(1) *Sailing Plan Report.* Sailing plan reports, though optional, must contain the following:

(i) Vessel name,

(ii) International Radio Call Sign,

(iii) Intended time of departure,

(iv) Port of departure and latitude/longitude,

(v) Port of destination and latitude/longitude,

(vi) Estimated time of arrival,
(vii) Route information, and
(viii) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(2) *Departure Report.* Departure reports must contain the following:
(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Time of departure,
(iv) Port of departure,
(v) Latitude and longitude, and
(vi) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(3) *Position Report.* Position reports must contain the following:
(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Time at reported position,
(iv) Latitude and longitude, and
(v) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(4) *Deviation Report.* Deviation reports are necessary to report sailing plan changes or other changes and must contain the following:
(i) Vessel name,
(ii) International Radio Call Sign,
(iii) The changes to prior reports, and
(iv) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(5) *Arrival Report.* Arrival reports must contain the following:
(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Port name,
(iv) Latitude and longitude,
(v) Time of arrival, and
(vi) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

§ 307.9 When to Report.

(a) Operators required to report under this regulation shall send reports during the Radio Officer's normal duty hours.

(b) Operators shall send reports as follows:

(1) Departure Reports must be sent as soon as practicable upon leaving the Port of Departure.

(2) Position Reports must be sent within twenty-four hours of departure, and subsequently, no less frequently that every forty-eight hours until arrival.

(3) Arrival Reports must be sent immediately prior to or upon arrival at the Port of Destination.

(4) Deviation Reports may be sent at the discretion of the vessel operator. Reports may be sent more frequently than the above schedule, as, for example, in heavy weather or under other adverse conditions.

§ 307.11 Report Changes.

The Administrator, through MARAD advisory or special warning, may direct changes in reporting frequency and specify particular information to be included in the comments section of AMVER messages.

§ 307.13 Where to Report.

To ensure that no charge is applied, all AMVER reports must be passed through specified radio stations. Those stations which currently accept AMVER reports and apply no coastal station, ship station, or landline charge are listed in each issue of the "AMVER Bulletin" publication, together with respective International Radio Call Sign, location, frequency bands, and hours of operation. The "AMVER Bulletin" is available for Commander (As), Atlantic Area, U.S. Coast Guard, AMVER Center, Governors Island, New York, NY 10004. Although AMVER reports may be sent through other stations, the Coast Guard cannot reimburse the sender for any charges applied.

§ 307.15 Release of Information from Reports.

(a) The information collected under these instructions will be released to recognized search-and-rescue authorities, to make advance notice to the U.S. Coast Guard of arrival in U.S. ports as required by certain sections of 33 CFR. The information collected will also be forwarded to the MARAD.

(b) AMVER reports will remain voluntary for foreign ships unless otherwise directed by their governments, and will be kept strictly confidential by the U.S. Coast Guard. Information collected from such foreign ships will not be forwarded to MARAD.

(c) any information provided in the remarks line will be stored in AMVER's automatic data processing system for later review. However, no immediate action will be taken, nor will the information be routinely passed to other organizations. The remarks line cannot be used as a substitute for sending information to other search-and-rescue authorities or organizations. However, AMVER will, at the request of other SAR authorities, forward remarks line information to the requesting agencies.

§ 307.17 Distress Messages and Hostile Action Reports.

(a) AWVER reports shall not replace distress messages and hostile action reports prescribed by Chapter 5, Defense Mapping Agency (DMA) Publication 117.

(b) Vessel owners or operators subject to this part shall summarize distress messages or hostile action reports in the comments sections of AMVER reports.

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of $50 for each day of failure to file an AMVER report required by this Part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

SUBCHAPTER G—EMERGENCY OPERATIONS

PART 308—WAR RISK INSURANCE

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AUTHORITY: Secs. 204, 1203, 1209, Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289; 49 U.S.C. 1.66).

SOURCE: 26 FR 4541, May 26, 1961, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting Part 308 appear at 43 FR 54091, Nov. 20, 1978.

Subpart A—General

§ 308.1 Eligibility of a vessel and its owner for insurance.

Any vessel within one of the following categories shall be eligible for insurance, but shall remain eligible only while meeting the qualifications criteria in one of said categories. An eligible vessel is not insured unless and until an application is submitted as required in Subpart B, C, or D of this Part 308 and the Maritime Administrator, Department of Transportation (Maritime Administrator) approves said application.

(a) A vessel registered, enrolled, or licensed under the laws of the United States of America (United States); any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof; any tug or barge or other watercraft (documented under the laws of the United States, or undocumented) owned by a citizen of the United States and used in essential water transportation; and United States citizen-owned watercraft used in the fishing trade or industry, except when used exclusively in or for sport fishing.

(b) Any vessel, other than a vessel described in paragraph (a) of this section determined by the Maritime Administrator to be engaged in the national defense or the national economy of the United States and subject to an unqualified Contract of Commitment with the United States in a form required by the Maritime Administrator, and which is:

(1) Owned by a United States corporation, or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or

through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, the ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States as defined in section 1201(d), Merchant Marine Act, 1936, as amended (46 U.S.C. 1281(d));

(2) Owned by a foreign corporation which is not directly or beneficially owned by a citizen or citizens of the United States, but which vessel is under a long-term charter or other long-term contract covering the use of the vessel on terms deemed by the Maritime Administrator to subject the vessel to United States control in the event of an emergency. The charterer of such vessel must be either a citizen or citizens of the United States or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or indirect through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States, as defined in section 1201(d), Merchant Marine Act, 1936, as amended (46 U.S.C. 1281(d)).

(c) Any other vessel, at the sole discretion of the Maritime Administrator, but only while engaged in a service which has been determined by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

[43 FR 54091, Nov. 20, 1978]

§ 308.2 Requirements for eligible vessels.

(a) *Restrictions—foreign-flag vessels.* Interim insurance is available on any vessel described in § 308.1 (a) and (b) of this part, provided application for interim insurance is submitted as required in Subparts B, C, or D of this Part 308, and the Maritime Administrator approves said application: *Provided,* That only vessels of Panamanian, Honduran, Bahamian, Republic of the Marshall Islands or Liberian registry not more than 20 years old will be considered eligible under § 308.1 (b) of this part for interim insurance, subject at all times to the determination specified in paragraph (b) of this section.

(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Maritime Administrator shall consider the characteristics, employment, and general management of the vessel. The Maritime Administrator formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for interim insurance:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of a war or national emergency: *Provided,* That a vessel will be considered to be substantially engaged in the foreign commerce of the United States if, on a semiannually basis, in excess of thirty percent (30%) of the net tons of cargo carried by the vessel is carried between a foreign port or ports and a port or ports in the United States (including Alaska, Hawaii, Puerto Rico, and any territory or insular possession of the United States), but only if such cargo is transported to such port or ports for consumption therein or for transshipment (in its raw state or subsequent to refining) for consumption elsewhere in the United States;

(2) Product tankers up to 90,000 deadweight tons and with particular emphasis on so-called handy-sized tankers having relatively high speed and refueling at sea capability;

(3) Dry bulk cargo vessels;

(4) Heavy lift vessels;

(5) Refrigerated vessels and other classes of ships in short supply in the United States-flag fleet; and

(6) Other vessels with special capabilities.

(c) *Vessel Position Reports.* All vessels for which war risk insurance interim binders have been issued shall file a Vessel Position Report. The purpose of this report is to inform cognizant U.S. agencies of vessel arrivals, departures and at-sea locations. Failure to make required regular reports will cause MARAD to issue a one-time notice of default. If failure to report continues, MARAD shall cancel the interim binder for the subject vessel and any insurance attaching thereunder. MARAD will issue reporting instructions and formats with the binders.

(d) *Change in status of vessel described in § 308.1 (a) and (b) after binder issued: Notice.* It is the intention of the parties that any breach of the warranty prescribed hereunder as to vessels in all categories with respect to Department of Commerce Transportation Orders T-1 and T-2 (44 CFR Parts 401, 402 and 403), as well as the additional warranties as to vessels in categories (b)(1) and (b)(2) of this section, with respect to maintenance of eligibility for insurance and availability of the insured vessels to the U.S. Government in time of emergency, shall terminate the binders and any insurance attaching thereunder. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, or any other change in status which, by the terms of the binder causes the binder to terminate, prompt notice shall be given in writing to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005.

(e) *Change in status of other vessels: Notice.* It is the intention of the parties that any breach of the warranty as to operation in the approved service of vessels described in § 308.1(c) shall terminate the insurance. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, any other change in status or change in operation of the vessel in the approved service prompt notice shall be given to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005.

[43 FR 54092, Nov. 20, 1978, as amended at 50 FR 50166, Dec. 9, 1985; 53 FR 8189, Mar. 14, 1988; 55 FR 5461, Feb. 15, 1990]

§ 308.3 Applications for insurance; warranties; supporting documents; payment of binder fees.

(a) *Application, binder forms.* A single application for War Risk Insurance shall be filed on Form MA-528, specifying the types of insurance coverages for which the applicant is applying. A single application may be submitted for several vessels, if the application identifies each vessel to b insured and the coverage(s) required by completing Appendices A and B t that form. An interim binder for wa risk insurance coverage, of the type described in subparts B, C and D o this part, shall be on Form MA-942.

(b) *Warranties*—(1) *In general.* Applications for war risk hull and protection and indemnity insurance in an eligible category of this Part 308 shall include a warranty that, at all times during the effective period of the binder and any insurance attaching thereunder, the insured vessel, regardless of its nation of registry, wi comply with Department of Commerce Transportation Orders T-1 and T-2 (44 CFR Parts 401, 402, and 403 or any modifications thereof so long a they remain in force and that the vessel will not be chartered, except with the prior approval of the Maritime Administration, unless in accordance with the provisions of § 221.7 of this chapter. The requirement for "prior approval" of the Maritime Administration of charters to noncitizens is applicable to any charter in existence at the time the applicant applies for insurance. Existing charters which are subject to this requirement include charters or contracts of affreightment to noncitizens which will extend for a period of more than six (6) months subsequent to the date of application for insurance or under which the vessel is committed to make a voyage or voyages of which the total period of time will extend for more than six (6 months subsequent to the date of application for insurance.

(2) *Vessels described in § 308.1(a)* Applications for war risk insurance o a vessel described in § 308.1(a) shall contain the warranty that at and from the date of issuance of the interim binder and for and during the term of any insurance attaching thereunder such vessel will remain eligible within its category.

(3) *Vessels described in § 308.1(b* Applications for war risk insurance o a vessel described in § 308.1(b) shal contain the warranties that at a times the vessel will remain eligible within its applicable category; that the vessel will be made available for use b the United States pursuant to th

signed Contract of Commitment submitted with the insurance applications, as required by the Maritime Administration; that the vessel will remain in the approved service; and that no controlling interest in the vessel shall be transferred by a subsequent sale or long-term charter, except on the condition that the successor in interest agrees to be bound by the terms of the applicant's Contract of Commitment. All instruments transferring any controlling interest in the vessel, including long-term charter or merger agreements, shall be submitted to the Maritime Administration for prior approval.

(4) *Vessels described in § 308.1(c).* Applications for war risk insurance on a vessel described in § 308.1(c) shall contain warranties that the vessel will remain in the approved service and that any change in flag or service will be reported in advance to the Maritime Administration for a new determination as to whether the vessel's service is in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

(5) *Vessel locator filing requirements for vessels in all categories.* Applications for insurance on vessels in all categories, except tugs and barges and vessels used exclusively in the fishing trade or industry, described in § 308.1(a), shall contain a warranty that at all times the vessel will file reports as required under the U.S. Merchant Vessel Locator Filing System (USMER) as prescribed in § 308.2(c) of this section.

(c) *Filing applications for insurance.* An application for insurance on a vessel described in § 308.1(a) shall be made to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005, underwriting agent for the Maritime Administration, as prescribed in § 308.3. All other insurance applications shall be made to the Maritime Administration, Attention: Director, Office of Trade Analysis and Insurance, Washington, DC 20590.

(d) *Materials in support of application on vessel described in § 308.1(b)*—(1) *In general.* An application for insurance on a vessel described in § 308.1(b) shall be accompanied by:

(i) A contract of commitment, in the form prescribed in § 308.5 of this part;

(ii) An executed agreement contained in the application for insurance that any charter or other contract covering the use of the vessel during the period of the binder or any insurance attaching thereunder shall be subject to termination or suspension without notice in the event the United States requires the use of the vessel under the voluntary contract of commitment submitted by the applicant;

(iii) In the event the vessel is determined to be ineligible under the terms of this part 308, the applicant will be so advised and the executed contract of commitment and any official foreign government action or approval will be returned to the applicant by the Maritime Administration.

(2) *Certification of citizenship.* An application for insurance on such a vessel shall be supported by execution of the citizenship certification, in the format set out in Appendix C to Form MA-528, as described in § 308.3. That certification shall be required to establish the U.S. citizenship of the majority ownership and control of the vessel-owning corporation, whether that ownership is direct or through intervening corporations.

(3) *Existing long-term charters.* An application for a vessel in this category which is at the time of application under long-term charter or other long-term contract, either to the applicant or from the applicant to a third party, shall be jointly submitted by the owner and the charterer, and in addition to the other materials required under this paragraph, shall be accompanied by a copy of the long-term contract covering the use of the vessel and all addenda thereto, certified to be full and complete copies (except as to rate of hire or freight) and a completed Appendix C to Form MA-528, described in § 308.3 of this part establishing the U.S. citizenship of the majority of the shareholders and control of the charterer. The charterer shall also furnish to the Maritime Administration a certified copy of any amendment to such charter which may be issued subsequent to the issuance of

any binder of insurance under this Part 308.

(4) *Foreign government action or approval.* An application for a vessel in this category also shall be accompanied by a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a contract of commitment with the United States.

(5) *Additional materials.* With respect to a vessel in this category, the applicant shall submit the following additional materials:

(i) A statement describing the service in which the vessel is engaged, including a listing of the vessel's voyages and ports of call during the immediately preceding six (6) month period, indicating the tonnage and type of cargo carried on such voyages and the reasons why such service should be deemed to be in the interest of the national defense or the national economy of the United States;

(ii) Material demonstrating the management and financial capabilities of the applicant, and

(iii) In the case of a new vessel or a vessel which has not for the six (6) months immediately prior to the date of the application been engaged in the foreign commerce of the United States, a statement, signed by a responsible company official, certifying the extent to which the vessel will be engaged in the foreign commerce of the United States for the six (6) months immediately following the issuance of any interim binder of insurance under this Part 308.

(e) *Requests for changes in binders.* All requests for changes in binders and inquiries relative to the insurance after the interim binders have been issued shall be directed to the American War Risk Agency, 14 Wall Street, New York, NY 10005.

(f) *Fees.* A check payable in U.S. funds to the "Maritime Adm.—Transportation" for the total amount of all binder fees payable by such applicant shall accompany each application. Binder fees are not returnable.

(g) *Availability of Application Forms.* Form MA-528 may be obtained from either the American War Risk Agency, at the address in paragraph (e) of this section, or the Maritime Administration, Attention: Director Office of Trade Analysis and Insurance (MAR-540), 400 Seventh Street S.W., Washington, DC 20590.

[43 FR 54092, Nov. 20, 1978, as amended at 50 FR 50166, Dec. 9, 1985; 53 FR 8189, Mar. 14, 1988]

§ 308.4 [Reserved]

§ 308.5 Form of voluntary contract of commitment.

Applications for insurance on vessels described in § 308.1(b) of this Part 308 shall be accompanied by a contract of commitment, in triplicate originals, executed by the owner (or by the owner and the charterer where required by § 308.3 of this part). Contracts of commitment shall be submitted on standard contract form which may be obtained from the American War Risk Agency or the Maritime Administration at the addresses given above (NOTE: The effective date of the contract of commitment will be the effective date of the binder and will be inserted in the contract of commitment by the Maritime Administration.)

Contract MA————

OWNER'S CONTRACT OF COMMITMENT

This agreement, made as of ——— 19——, by and between the United States of America, acting by and through the Department of Transportation, Maritime Administration or its successor (herein called the "United States"), and ————, a corporation organized and existing under the laws of ———— (herein called the "Owner"), and having its principal place of business at ————;

WITNESSETH

Whereas, on ————, 19——, the Maritime Administrator, Department of Transportation (herein called the "Maritime Administrator") found and determined that the ———— (herein described as the "vessel"), Official No. ————, documented under the laws of ————, of ———— Gross Tons, which was built ————, 19——, is eligible for interim war risk insurance under Title XII, Merchant Marine Act, 1936, as amended, 46 CFR Part 308, § 308.1(b): *Provided,* That the Vessel shall at all time be in compliance with requirements of 46 CFR Part 308 and that the Vessel shall be made available to the United States upon request in event of a national emergency, as described in Article (1) herinbelow, pursuant to this Contract of Commitment: *And, provided further,* That the Owner or the Master of the Vessel shall periodically notify the United States of the Vessel's position in accordance with § 308.2(c) of this Part 308 and

Whereas, the parties hereto desire to enter into such a voluntary Contract of Commitment covering the Vessel:

Now, therefore, in consideration of the premises and other good and valuable considerations hereinafter set forth, the parties hereto mutually agree as follows:

(1) The Owner hereby commits itself to make the Vessel available to the United States during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, i.e., whenever the President of the United States of America shall proclaim that the security of the national defense makes it advisable or during any national emergency which may have been declared by proclamation of the President of the United States, and expressly agrees that any charter or other contract covering the use of the Vessel during the period covered by the interim war risk insurance binder and the period of any insurance attaching thereunder shall be subject to termination or suspension without notice in the event the United States requests the use of the Vessel under this voluntary Contract of Commitment.

(2) Upon the request of the United States, acting through the Department of Transportation, Maritime Administration, or its successor, or through the Department of the Navy, pursuant to authorization from the Department of Transportation, Maritime Administration, the Vessels shall be made available as directed by such Department, wherever the Vessel may then be, whether at sea or in port, at the option of such Department, for purchase or for use (under a time or bareboat form of charter) for such period or periods of time as required by the United States.

(3) In the event the Department of the Navy exercises the authority referred to in Article (2) of this section, it is understood that (a) if time permits, the Maritime Administrator, upon advice by the Chief of Naval Operations, will notify the Owner and also the Master of the Vessel to make the Vessel available to Naval authority, and will also direct the Master to report to the appropriate Naval Commander for operational control or (b) if time does not permit, and the Senior Naval Commander in or for the area or his authorized representative shall have found it necessary, he will take immediate operational control of the Vessel, after which the Maritime Administrator, upon receipt of advice of such action from the Chief of Naval Operations, will confirm such action to the Owner and also to the Master; with such confirmation to be retroactive to and effective as of the day and hour when control was assumed by the Naval authorities.

(4) As soon as practicable after the United States has assumed operational control of the Vessel as aforesaid, either through the Maritime Administration directly, or through the Department of the Navy, the Maritime Administration will tender to the Owner an agreement containing the same terms and conditions upon which a vessel of the United States could be requisitioned for purchase or charter in accordance with the applicable provisions of section 902(a), Merchant Marine Act, 1936, as amended.

(5) This voluntary Contract of Commitment is not intended, nor shall it be deemed, to affect or modify in any respect the terms and obligations contained in any other agreement or contract of whatsoever nature under which the Vessel is or may hereafter become separately committed to the use of the United States during the period described in Article (1) hereof.

(6) Subject to the various warranties, agreements and representations of the Owner as contained in the Owner's application for interim war risk insurance, submitted with this Contract, the United States hereby undertakes and agrees to provide such war risk insurance on the Vessel pursuant to regulations published in the FEDERAL REGISTER ———— , as amended from time to time.

(7) It is the intention and understanding of the parties hereto that the period of this Contract of Commitment shall be coextensive with the period of the interim war risk insurance binder and any insurance issued thereunder.

In witness whereof, this voluntary Contract of Commitment has been executed in triplicate by the United States on the —— day of ———, 19—, and by the Owner on the —— day of ———, 19—.

UNITED STATES OF AMERICA,
DEPARTMENT OF TRANSPORTATION
(MARITIME ADMINISTRATION)
By: ————————
————————
(Owner)
By: ————————

(Corporate Seal)

Attest:
(Secretary) ————————

I, ————, certify that I am the duly chosen, qualified, and acting Secretary of ————, a party to this Contract, and, as such, I am the custodian of its official records and the minute books of its governing body; that ———— who signed this Contract on behalf of said corporation, was then the duly qualified ———— of said corporation; that said officer affixed his manual signature to said Contract in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Contract is within the scope of the corporate and lawful powers of this corporation.

————————

(Secretary)

(Corporate Seal)

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54094, Nov. 20, 1978; 53 FR 8189, Mar. 14, 1988]

§ 308.6 Period of interim binders and renewal procedures.

(a) All interim binders on U.S.-flag vessels under § 308.1(a) and United States citizen-owned or controlled foreign-flag vessels under § 308.1(b), issued in accordance with Subparts B, C, and D of this part, and which expired at midnight, September 30, 1984, are reinstated from July 3, 1985 until midnight, June 30, 1990: *Provided*, that on or before March 10, 1986, the assureds under interim binders on U.S.-flag vessels, as well as United States citizen-owned or controlled foreign-flag vessels, comply with the requirements set forth in paragraph (b) of this section, except that applicants to reinstate binders for foreign-flag vessels shall mail their statements to the address in paragraph (d) of this section. Failure to comply with such requirements, within the prescribed time, will result in automatic termination of the binders on March 10, 1986.

(b) Assureds under interim binders on U.S.-flag vessels extended under paragraph (a) of this section shall file a statement, in triplicate, on the letterhead of the assured, setting forth the former binder numbers, the vessel name and official number (unless the vessel is undocumented), and a list of all documents previously submitted, with a certification as to their completeness and accuracy as of the date of filing for reinstatement. If any previously submitted documents are no longer complete and accurate, as required, assureds shall submit corrected documents. Any required documents not previously submitted shall be attached to the certification and accompany the binder fees, as prescribed in § 308.102, 308.202 and/or 308.302. Checks should be made payable to "Maritime Adm.—Transportation" and be sent with the other required documents to the American War Risk Agency, 14 Wall Street, New York, NY, 10005, within the prescribed day period, by March 10, 1986.

(c) New applications for interim binders on U.S.-flag vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fees prescribed, shall be filed with the American War Risk Agency at the address shown in paragraph (b) of this section. All interim binders on U.S.-flag shall become effective as of the date of determination of eligibility by the Maritime Administration (as required).

(d) Interim binder reinstatement on a United States citizen-owned or controlled foreign-flag vessel will terminate on March 10, 1986, if that vessel no longer meets one or more eligibility requirements specified in § 308.2(a). MARAD shall make this determination based on examination of the same information as required under paragraph (b) of this section, which shall be filed with the Maritime Administration, Attn: Director, Office of Trade Analysis and Insurance, Washington, DC, 20590. Applications for new interim binders on United States citizen-owned or controlled foreign flag vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fee, shall also be filed with this MARAD offfice.

[50 FR 50167, Dec. 9, 1985; 51 FR 4352, Feb. 4, 1986, as amended at 53 FR 8189, Mar. 14, 1988]

§ 308.7 Premiums and payment thereof.

Rate to be fixed promptly upon the happening of the event causing the "American Institute Hull War Risks and Strikes Clauses (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses December 1, 1977" of any war risk policies to become operative and premium shall be payable within ten days after receipt of notice of the amount thereof by the assured. Premiums shall be paid to the Underwriting Agent that issued the binders by check payable to the order of "Maritime Adm.—Transportation." In the event that it is subsequently determined that insurance under interim binders did not attach, premiums paid will be refunded by the Maritime Administrator.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended by Amdt. 21, 36 FR 1337, Jan. 28, 1971; 45 FR 22042, Apr. 3, 1980]

§ 308.8 War risk insurance underwriting agency agreement.

The following is the standard form of underwriting agency agreement applicable with respect to agreements made after June 7, 1961, which will be executed by the Maritime Administrator and domestic insurance companies or groups of domestic insurance companies authorized to do a marine insurance business in any States of the United States, appointing such companies or groups of companies as Underwriting Agents to issue binders and policies covering hull, protection and indemnity, and Second Seamen's war risk insurance under Subparts B, C, and D of this part:

Form MA-355 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

UNDERWRITING AGENCY AGREEMENT

This Agreement, made and entered into this —— day of ———, 19—, by and between the United States of America (herein called the "United States"), acting by the Secretary of Transportation (herein called the "Secretary"), represented by the Maritime Administrator, and ——— (herein called the "Underwriting Agent"), having an office for the transaction of business at ———, an association of domestic insurance companies (herein called the "Participating Members"), each of which is authorized to do a marine insurance business in a State of the United States.

WITNESSETH

Whereas, pursuant to Title XII of the Merchant Marine Act, 1936, as amended (herein called the "act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his Underwriting Agent; and

Whereas, the Secretary has delegated authority to the Maritime Administrator to perform the functions vested in the Secretary by title XII of the act (Section 8.01, subsection 3 of Department Order No. 117 (Revised), published in the FEDERAL REGISTER July 21, 1960, 25 FR 6934); and

Whereas, the Maritime Administrator has determined to employ the Underwriting Agent as an underwriting agent in providing war risk insurance as set forth in paragraphs (a), (c), (d), (e), and (f) of section 1203 of the act upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions herein set forth, the parties hereto agree as follows:

1. *Appointment of agent.* The Maritime Administrator hereby authorizes the Underwriting Agent, as an agent acting on behalf of the Maritime Administrator and not as an independent contractor, to utilize its offices and facilities to make available the insurance which the Secretary is authorized to provide pursuant to paragraphs (a), (c), (d), (e), and (f) of section 1203 of the act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time to the Underwriting Agent by the Maritime Administrator. The Underwriting Agent hereby agrees to utilize its offices and facilities to make such insurance available, as agent for the Maritime Administrator, and to perform the functions hereinafter provided for to the best of its ability. The Underwriting Agent may act through its home office, branch offices or agencies which are authorized to write insurance on its behalf.

2. *Duties of agent.* The duties of the Underwriting Agent shall be as follows:

(a) *Receive applications and issue binders and policies.* The Underwriting Agent shall receive applications for insurance, subject to the rates and conditions specified by the Maritime Administrator upon forms prescribed by the Maritime Administrator. After determining that the applications have been submitted in complete and proper form and are accompanied by remittances in the amount of the premiums required for the insurance applied for, the Underwriting Agent shall countersign binders or policies of insurance, or both binders and policies of insurance, subject to the rules, rates, terms and conditions specified by the Maritime

Administrator on forms prescribed by the Maritime Administrator. The insurer under such policies shall be the United States.

(b) *Keep records.* The Underwriting Agent shall keep a full and complete record of all applications, binders, and policies, and shall also record all premiums, charges or deposits required by the terms of the binders and policies, so that a record may be available at all times to the Maritime Administrator, both as to all applications received and all binders and policies issued, and as to all payments made by the assured in connection with such binders and policies.

(c) *Receive money and reports.* The Underwriting Agent shall receive checks made payable to the order of the Maritime Adm.—Transportation for the premiums and charges involved, which checks shall be deposited by the Underwriting Agent in the Federal Reserve Bank nearest to its office, or in such other bank as may be authorized by the Maritime Administrator to receive such deposits. The Underwriting Agent shall receive from the bank in which the deposits are made receipts therefor in such number as may be prescribed in instructions to the Underwriting Agent and handle the receipts so received in accordance with such instructions.

(d) *Report monthly.* The Underwriting Agent shall prepare a monthly report, in summary form, of all applications received, and binders and policies issued or cancelled by the Underwriting Agent on a standard form approved by the Maritime Administrator, and transmit them, together with receipts for deposits made as above provided, to the Maritime Administrator.

(e) *Other reports.* The Underwriting Agent shall prepare and transmit such other reports as may be required by the Maritime Administrator.

(f) *Process claims for return premiums.* The Underwriting Agent shall receive from holders of policies issued by such Underwriting Agent any claims for return premiums on a standard form prescribed by the Maritime Administrator and shall certify thereon, if such is the fact, that the amounts with respect to which such return is claimed were previously paid and that based upon the statements included in such application by the assured the return premium applied for is payable in accordance with the regulations of the Maritime Administrator. Such applications and certifications shall be transmitted promptly to the Maritime Administrator.

(g) *Process claims for losses.* The Underwriting Agent shall receive reports of losses on vessels and disbursements (insured pursuant to paragraphs (a) and (c), section 1203 of the act), assemble all pertinent documents and facts relating thereto required to determine the validity of the claims, including the amounts thereof, and submit the same to the Maritime Administrator with its recommendation as to payment.

(h) *Help establish advisory committee.* The Underwriting Agent shall, if requested by the Maritime Administrator, cooperate with the Maritime Administrator to establish and maintain an advisory underwriting committee to consult with and advise the Maritime Administrator in connection with specific underwriting problems, subject to the rules, regulations and instructions of the Maritime Administrator, and to establish and maintain such other advisory committees as may be deemed necessary from time to time to safeguard the interests of the Maritime Administrator, including a loss committee to act as a recipient for information concerning losses and to pass upon any recommendations made by the Underwriting Agent as to losses and payments of claims arising therefrom in excess of an amount to be fixed by the Maritime Administrator.

3. *Compensation*—(a) *Fair and reasonable.* The Underwriting Agent shall receive for its services such amount as the Maritime Administrator and the Underwriting Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Underwriting Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Underwriting Agent but excluding payments to attorneys unless such employment has been authorized by the Maritime Administrator: *Provided, however,* That all such expenditures shall be subject to the review of the Maritime Administrator, and further provided that, except as authorized by section 1209(d) of the act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly.* A statement of the compensation due to the Underwriting Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Underwriting Agent to the Maritime Administrator monthly or at such other intervals as the Maritime Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Underwriting Agent.

4. *Standard of performance.* In the discharge of its duties and obligations pursuant to this Agreement, the Underwriting Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the ad-

ministration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Underwriting Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Underwriting Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Underwriting Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Underwriting Agent shall be deemed to include a determination by the Underwriting Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Underwriting Agent.

5. *Writing insurance for own account.* It is understood that the Participating Members of the Association constituting the Underwriting Agent are or may be engaged in writing for their own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by the Underwriting Agent hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Underwriting Agent hereunder on behalf of the Maritime Administrator, pursuant to this Agreement.

6. *Books and records*—(a) *Maintained subject to audit.* The Underwriting Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Maritime Administrator and shall be kept separate from those relating to other business of the Underwriting Agent or of the Participating Members thereof, in accordance with regulations made from time to time by the Maritime Administrator, and shall at all times be subject to audit and inspection by the Maritime Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Underwriting Agent or of the Participating Members thereof in the performance of and involving transactions related to this Agreement.

7. *Act only as agent.* The Underwriting Agent shall act only in the capacity of agent for the Maritime Administrator as principal, in the performance of the functions provided for hereunder. The Underwriting Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Maritime Administrator under and pursuant to this Agreement. The Underwriting Agent may accompany its signature in all binders and policies countersigned by it hereunder with a statement that, in countersigning such binders and policies, it act solely under the powers conveyed to it by the Maritime Administrator and that it does not thereby warrant its authority to accept applications for insurance or its authority to countersign, nor the authority of the Maritime Administrator to issue such binders and policies.

8. *Special circumstances*—(a) *Reimbursement of taxes and fees.* In the event that the Underwriting Agent or any Participating Member or Members thereof, after giving notice to the Maritime Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any State of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting income taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Underwriting Agent or any Member or Members thereof hereunder, the Maritime Administrator shall reimburse the Underwriting Agent and any Participating Member or Members therefor and for any special expenses necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Underwriting Agent or any Participating Member or Members thereof on account of anything done or not done, by the Underwriting Agent or any Participating Member or Members thereof or the Maritime Administrator, in connection with the issuance or non-issuance or cancellation of insurance or the acceptance or denial of applications for binders or policies of insurance on behalf of the Maritime Administrator or the payment or non-payment of claims for loss or return premium arising hereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations or instructions of the Maritime Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Maritime Administrator), the Maritime Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Underwriting Agent or any Participating Member or Members thereof be compelled or required to make any payment or incur any expense, the Maritime Administrator shall reimburse the Underwriting Agent or any Participating Member or Members thereof for the amount thereof; provided always that the Maritime Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Underwriting Agent shall have complied with the standard of performance required thereunder. In any of the foregoing cases, the Underwriting Agent shall render to the Maritime Administrator such reasonable cooperation and assistance as the Maritime Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as of the date of its execution by the Maritime Administrator and shall continue in force until terminated. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Underwriting Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Underwriting Agent for the purpose of securing business. For breach or violation of this warranty the Maritime Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Underwriting Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member or delegate.* No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

14. *Participating Members*—(a) *Indebted to United States.* The Participating Members of the association constituting the Underwriting Agent, severally but not jointly and limited each to its participation therein, shall be indebted to the United States for such amounts as the Secretary is entitled to recover from the Underwriting Agent in accordance with the foregoing provisions and, in the event of failure to pay on demand, the Secretary may bring an action or actions in any court in the United States to recover such amount or amounts from the Participating Members, severally but not jointly, on behalf of the United States.

(b) *Change of shares.* Without canceling this Agreement, the Participating Members of the association constituting the Underwriting Agent may, upon not less than ten (10) days' prior written notice to the Maritime Administrator, change their share of participation by agreement among themselves, including the termination of the interests of one Participating Member and the assumption of its share by one or more of the other Participating Members or by the admission of other eligible domestic insurance companies to membership in the association. Any such change of apportionment or termination of participation shall not relieve any Participating Member of its obligations in respect to matters which occurred prior to any change or termination of its interest. Unless the Underwriting Agent is notified in writing by the Maritime Administrator, within ten (10) days after receipt of notice from the Underwriting Agent, that the proposed change in participation or termination or assumption is disapproved, such change shall be understood to be acceptable to the Maritime Administrator.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

United States of America,
Secretary of Transportation,
By: Maritime Administration.

____
(Maritime Administrator)

____
(Underwriting Agent)

By: ____________________

Attest:

____

Attest:

____

Approved as to form:

____
(Assistant General Counsel,
Maritime Administration)

I, ———, certify that I am the duly chosen, qualified, and acting Secretary of ———, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that ———, who signed this Agreement on behalf of said association, was then the duly qualified ——— of said association; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said association by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the lawful powers of this association.

____

Subpart B—War Risk Hull and Disbursements Insurance

§ 308.100 Amounts of insurance for which application may be made.

An applicant for war risk hull insurance shall state the amount of insurance desired but any payment of claim for damage to or actual or constructive total loss of the vessel insured shall be made as provided in § 308.103(a). An applicant desiring disbursements insurance may at his option obtain such additional insurance but any claim for loss of disbursements as a consequence of the actual or constructive total loss of the vessel insured shall be made as provided in § 308.103(c).

§ 308.101 [Reserved]

§ 308.102 Issuance of interim binder; its terms and conditions; fees.

Upon acceptance of an application, an interim binder in form as set forth in § 308.3 will be issued and there shall be deemed to be incorporated therein by reference all the terms, conditions, and warranties contained in the application for war risk hull and disbursements insurance (set forth in § 308.3) and the standard war risk hull insurance policy (set forth in § 308.107) to the same extent as if such application and policy were made a part of the binder. The binder fee (not returnable) for U.S.-flag vessels shall be $25 per vessel under 500 gross tons; $100 per vessel of 500 gross tons or over; and $5 per LASH or similar type barge. The binder fee (not returnable) for foreign-flag vessels shall be $50 per vessel under 500 gross tons; $200 per vessel 500 tons or over; and $10 per LASH or similar type barge. All fees are payable in U.S. funds by check to order of the "Maritime Adm.—Transportation."

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54095, Nov. 20, 1978; 50 FR 50167, Dec. 9, 1985]

§ 308.103 Sums which will be insured under interim binder.

(a) The valuation in the policy for damage to or actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Secretary of Transportation which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: *Provided, however,* That in the case of a construction subsidized vessel, for the period of insurance prior to requisition for title or use, the valuation so determined shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use the valuation so determined shall not exceed the amount which would be payable under section 802 in the case of requisition for title or use: *Provided, further,* That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary of Transportation, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary of Transportation and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: *Provided, however,* That in the case of a construction-subsidized vessel, the valuation determined by the court as such just compensation for any period of insurance prior to actual requisition for title or use of the vessel shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for any period of insurance after actual requisition for use, the valuation determined by the court shall be the amount which would have been payable under section 802 in the case of requisition for title: *And provided further,* That in the event of an election by the insured to reject the stated valuation fixed by the Secretary of Transportation and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading Maritime Activities in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading "Maritime Activities" in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy. The "stated valuation" of the vessel insured refers to the vessel as described in § 309.5 of this chapter.

(b) Insurance risks covered by the terms of the standard form of war risk hull insurance policy (§ 308.107), except damage to or actual or constructive total loss of the vessel insured as set forth in paragraph (a) of this section and loss of disbursements (limited to consumable and subsistence stores, slop chests, bar stock and bunker fuel lost as a consequence of the actual or constructive total loss of the vessel insured) as set forth in paragraph (c) of this section and identified as disbursements, shall be insured for an amount not in excess of the "sum insured" as referred to in said policy.

(c) Disbursements shall be insured as authorized under section 1203(c), Title XII, Merchant Marine Act, 1936, as amended, and shall be limited to consumable and subsistence stores, slop chests, bar stock and bunker fuel. Disbursements insurance shall be optional and is insurance additional to the war risk hull insurance provided under this subpart, and payment of claim shall be limited to the actual value of the disbursements lost as a consequence of the actual or constructive total loss of the vessel insured.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54095, Nov. 20, 1978; 50 FR 50167, Dec. 9, 1985]

§ 308.104 Additional war risk insurance.

Owners or charterers may obtain, on an excess basis, additional war risk insurance in such amounts as desired and such insurance shall not inure to the benefit of the Maritime Administrator as underwriter.

§ 308.105 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to the Underwriting Agent that issued the binder and all claim documents shall likewise be filed with such Underwriting Agent, but payment of the amounts due in settlement of claims will be made by the Maritime Administrator.

§ 308.106 [Reserved]

§ 308.107 Standard form of war risk hull insurance policy.

The following is the standard form of war risk hull insurance policy:

Form MA—240 (Revised 5-61)

Policy No. H- ———

UNITED STATES OF AMERICA

Represented by the Maritime Administrator, acting for the Secretary of Transportation (sometimes hereinafter called the Underwriter), by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof, does make insurance and cause to be insured: ——— for account of ——— but subject to the following provisions with respect to change of ownership, etc.:

In the event of any change, voluntary or otherwise, in the ownership of the Vessel or if the Vessel be placed under new management or be chartered on a bareboat basis or requisitioned on that basis, then, unless the Underwriter agrees thereto in writing, this Policy shall thereupon become cancelled from time of such change in ownership or management, charter or requisition; provided, however, that in the case of an involuntary temporary transfer by requisition or otherwise, without the prior execution of any written agreement by the Assured, such cancellation shall take place fifteen days after such transfer; and provided further that if the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, such cancellation shall be suspended until arrival at final port of discharge if with cargo or at port of destination if in ballast. This insurance shall not inure to the benefit of any such charterer or transferee of the Vessel, and if a loss payable hereunder should occur between such transfer and such cancellation the Underwriter shall be subrogated to all the rights of the Assured against the transferee, by reason of such transfer, in respect of all or part of such loss as is recoverable from the transferee and in the proportion which the respective amounts insured bear to the insured value. A pro rata daily return of net premium shall be made. The foregoing provisions with respect to cancellation in the event of change in ownership or management, charter or requisition shall apply even in the case of insurance "for account of whom it may concern."

Loss, if any (excepting claims required to be paid to others under the Collision Clause), payable to ——— or order. Sum insured ——— dollars ($———), but in the event of damage to or actual or constructive total loss of the vessel, the insured value will be not in excess of $———*, which latter amount is the stated valuation of the vessel determined by the Secretary of Transportation in accordance with section 1209(a), Title XII of Merchant Marine Act, 1936, as amended. This insurance does not cover loss of disbursements as a consequence of the actual or constructive total loss of said vessel. It is understood that, with respect to damage to or actual or constructive total loss of the vessel, this insurance shall not exceed the "sum insured" or the "stated valuation," whichever is the lesser amount.

At and from the ——— day of ———19—, ——— time to the ——— day of ——— 19—, ——— time.

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*If this valuation is not inserted when the binder is issued, it will be published in the FEDERAL REGISTER pursuant to Maritime Administration General Order 82 as amended from time to time.

EDITORIAL NOTE: The valuations for war risk insurance are published as notice documents. For a list of interim binders see 41 FR 5234, Feb. 4, 1976.

Provided, however, Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriter, be held covered at a pro rata monthly premium to her port of destination.

On the Vessel called the ——————Official No. —— (or by whatsoever name or names the said Vessel is or shall be called).

The said Vessel, for so much as concerns the Assured, by agreement between the Assured and the Underwriter in this Policy, is and shall be valued at as follows:

Hull, tackle, apparel, passenger fittings, equipment, stores, ordnance, munitions, boats and other furniture.	$....................	
Boilers, machinery, refrigerating machinery and insulation, motor generators and other electrical machinery, and everything connected therewith.	....	$...........

Donkey boilers, winches, cranes, windlasses and steering gear shall be deemed to be a part of the hull and not of the machinery.

Special Conditions and Warranties: Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

F. C. & S. CLAUSE

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision or contact with aircraft, rockets or similar missiles, or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

Held covered in case of any breach of warranty as to cargo, trade, locality or date of sailing, provided notice be given and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

The Underwriters to be paid in consideration of this insurance ——— Dollars being at the rate of —— percent.

In event of non-payment of premium thirty days after attachment this Policy may be cancelled by the Underwriter upon five days written notice being given the Assured. Such proportion of the premium, however, as shall have been earned up to the time of such cancellation shall be due and payable; but in the event of Total or Constructive Total Loss occurring prior to cancellation full annual premium shall be deemed earned.

To return—

—— cents percent net for each uncommenced month if it be mutually agreed to cancel this Policy. As follows for each consecutive 30 days the Vessel may be laid up in port, viz:

	Without cargo on board	*With cargo on board*
1. Under repair	—¢% net	—¢% net
2. Not under repair..........................	—¢% net	—¢% net

For the purpose of this clause a Vessel loading or discharging cargo shall be considered as "with cargo on board".

Provided always: (a) That in no case shall a return be allowed when the within named vessel is lying in a roadstead or in exposed and unprotected waters.

(b) That in the event of a return for special trade, or any other reason, being recoverable, the above rates of return of premium shall be reduced accordingly.

And arrival.

In the event of the Vessel being laid up in port for a period of 30 consecutive days, a part only of which attaches to this Policy, it is hereby agreed that the laying up period, in which either the commencing or ending date of this Policy falls, shall be deemed to run from the first day on which the Vessel is laid up and that on this basis the Underwriter shall pay such proportion of the return due in respect of a full period of 30 days as the number of days attaching hereto bear to thirty.

Additional insurances as follows are permitted:

(a) *Disbursements, managers' commissions, profits or excess or increased value of hull and machinery, and/or similar interests however described, and freight (including chartered freight or anticipated freight) insured for time.* A sum not exceeding in the aggregate 25 percent of the insured value of the Vessel.

(b) *Freight or hire, under contracts for voyage.* A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under this section shall be reduced as the freight or hire is earned by the gross amount so earned.

(c) *Anticipated freight if the vessel sails in ballast and not under charter.* A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance, plus the charges of insurance. *Provided, however,* That no insurance shall be permitted under this section if any insurance is affected under section (b).

(d) *Time charter hire or charter hire for series of voyages.* A sum not exceeding 50 percent of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under this section shall be reduced as the hire is earned under the charter by 50 percent of the gross amount so earned but where the charter is for a period exceeding 18 months the sum insured need not be reduced while it does not exceed 50 percent of the gross hire still to be earned under the charter. An insurance under this section may begin on the signing of the charter.

(e) *Premiums.* A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Protection and Indemnity or War, etc., Risk insurance) reducing pro rata monthly.

(f) *Returns of premium.* A sum not exceeding the actual returns which are recoverable subject to "and arrival" under any policy of insurance.

(g) *Insurance irrespective of amount.* Against risks excluded by the F.C. & S. Clause, and risks enumerated in the American Institute War and Strikes Clauses and General Average and Salvage Disbursements.

Warranted that no insurance on any interests enumerated in the foregoing sections (a) to (f), inclusive, in excess of the amounts permitted therein and no insurance subject to P.P.I., F.I.A. or other like term, on any interests whatever excepting those enumerated in section (a), is or shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers or Mortgagees. Provided always that a breach of this warranty shall not afford the Underwriter any defense to a claim by a Mortgagee who has accepted this Policy without knowledge of such breach.

Beginning the adventure upon the said Vessel, as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam, motor power or sail; with leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but if without the approval of the Underwriter the Vessel be towed, except as is customary or when in need of assistance, or undertakes towage or salvage services under a pre-arranged contract made by Owners and/or Charterers, the Assured shall notify the Underwriter immediately and pay an additional premium if required but no such premium shall be required for customary towage by the Vessel in connection with loading and discharging. With liberty to discharge, exchange and take on board goods, specie, passengers and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, etc., on deck or otherwise.

Touching the Adventures and Perils which the said Underwriter is contented to bear and take upon itself, they are of the Seas, Men-of-War, Fire, Lightning, Earthquake, Enemies, Pirates, Rovers, Assailing Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners and of all other like Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Vessel, &c, or any part thereof; excepting, however, such of the foregoing Perils as may be excluded by provisions elsewhere in the Policy or by endorsement. And in case of any Loss or Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in and about the Defense, Safeguard and Recovery of the said Vessel, &c, or any part thereof, without prejudice to this Insurance, to the Charges whereof the Underwriter will contribute its proportion as provided below. And it is expressly declared and agreed that no acts of the Underwriter or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance also specially to cover (subject to the Average Warranty) loss of or damage to the subject matter insured directly caused by the following:

Accidents in loading, discharging or handling cargo, or in bunkering;

Accidents in going on or off, or while on drydocks, graving docks, ways, gridirons or pontoons;

Explosions on shipboard or elsewhere;

Breakdown of motor generators or other electrical machinery and electrical connections thereto, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull (excluding the cost and expense of replacing or repairing the defective part);

Breakdown of or accidents to nuclear installations or reactors not on board the insured Vessel;

Contact with aircraft, rockets or similar missiles, or with any land conveyance;

Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not Assured(s) hereunder;

Negligence of Master, Mariners, Engineers or Pilots;

provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, or any of them. Masters, Mates, Engineers, Pilots or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the Vessel.

In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given in writing to the Underwriter, where practicable, prior to survey, so that it may appoint its own surveyor if it so desires. The Underwriter shall be entitled to decide the port to which a damaged Vessel shall proceed for docking or repairing (the actual additional expense of the voyage arising from compliance with the Underwriter's requirements being refunded to the Assured) and the Underwriter shall also have a right of veto in connection with the place of repair or repairing firm proposed and whenever the extent of the damage is ascertainable the Underwriter may take or may require to be taken tenders for the repair of such damage. In the event of failure to comply with the conditions of this clause 15 percent shall be deducted from the amount of the ascertained claim.

In cases where a tender is accepted with the approval of the Underwriter, an allowance shall be made at the rate of 30 percent per annum on the insured value for each day or pro rata for part of a day from the time of the completion of the survey until the acceptance of the tender provided that it be accepted without delay after receipt of the Underwriter's approval.

No allowance shall be made for any time during which the Vessel is loading or discharging cargo or bunkering.

Due credit shall be given against the allowance as above for any amount recovered:

(a) In respect of fuel and stores and wages and maintenance of the Master, Officers and Crew or any member thereof allowed in General or Particular Average;

(b) From third parties in respect of damages for detention and/or loss of profit and/or running expenses; for the period covered by the tender allowance or any part thereof.

Notwithstanding anything herein contained to the contrary, this policy is warranted free from Particular Average under 3 percent, or unless amounting to $4,850, but nevertheless when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, the Underwriter shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found.

Grounding in the Panama Canal, Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above a line drawn from the North Basin, Buenos Aires, to the mouth of the San Pedro River) or its tributaries, or in the Danube or Demerara Rivers or on the Yenikale Bar, shall not be deemed to be a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the Average be Particular or General.

No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

The warranty and conditions as to Average under 3 percent or unless amounting to $4,850 to be applicable to each voyage as if separately insured, and a voyage shall commence at the Assured's election when the Vessel either begins to load cargo or sails in ballast to a loading port. Such voyage shall continue until the Vessel has made not more than three passages or not more than two passages with cargo (whichever first occurs) and extend further until the Vessel thereafter begins to load cargo or sails (whichever first occurs), but such extension shall not exceed 30 days in port. A passage shall be deemed to be from the commencement of loading at the first port or place of loading until completion of discharge at the last port or place of discharge, or, if the Vessel sails in ballast, from the port or place of departure until arrival at the first port or place thereafter other than a port or place of refuge or a port or place for bunkering only. Each period in port of 30 days in excess of 30 days between passages shall itself constitute a passage for the purposes of this clause. When the Vessel sails in ballast to effect damage repairs such sailing or passage shall be considered part of the previous passage. In calculating whether the 3 percent or $4,850 is reached, Particular Average occurring outside the period covered by this Policy may be added to Particular Average occurring within such period, providing it occurs on the same voyage as above defined, but only that portion of the claim arising within the period covered by this Policy shall be recoverable hereon. A voyage shall not be so fixed that it overlaps another voyage on which a claim is made on this or the preceding or succeeding Policy. Particular Average which would be excluded by the terms of this Policy shall not be included in determining whether the 3 percent or $4,850 is reached.

No recovery for a Constructive Total Loss shall be had hereunder unless the expense of recovering and repairing the Vessel shall exceed the insured value.

In ascertaining whether the Vessel is a Constructive Total Loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or breakup value of the Vessel or wreck shall be taken into account.

In the event of Total or Constructive Total Loss, no claim to be made by the Underwriter for freight, whether notice of abandonment has been given or not. In no case shall the Underwriter be liable for unrepaired damage in addition to a subsequent Total Loss sustained during the period covered by this Policy.

General Average, Salvage, and Special Charges payable as provided in the contract of affreightment, or failing such provision, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

And it is further agreed that in the event of salvage, towage or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership or control of the Vessels) shall be ascertained by arbitration in the manner below provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

When the contributory value of the Vessel is greater than the valuation herein the liability of the Underwriter for General Average contribution (except in respect to amount made good to the Vessel) or Salvage shall not exceed that proportion of the total contribution due from the Vessel that the amount insured hereunder bears to the contributory value; and if because of damage for which the Underwriter is liable as Particular Average the value of the Vessel has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and the Underwriter shall be liable only for the proportion which such net amount bears to the contributory value.

In the event of expenditure under the Sue and Labor Clause, this Policy shall pay the proportion of such expenses that the amount insured hereunder bears to the insured value of the Vessel, or that the amount insured hereunder, less loss and/or damage payable under this Policy, bears to the actual value of the salvaged property, whichever proportion shall be less.

If claim for total loss is admitted under this Policy and sue and labor expenses have been reasonably incurred in excess of any proceeds realized or value recovered, the amount payable under this Policy will be the proportion of such excess that the amount insured hereunder (without deduction for loss or damage) bears to the insured value or the sound value of the Vessel at the time of the accident, whichever value was greater.

And it is further agreed that if the Vessel hereby insured shall come into collision with any other Ship or Vessel and the Assured or the Charterers or the Surety in consequence of the insured Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision the Underwriter will pay the Assured, or the Charterers, or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as its subscription hereto bears to the value of the Vessel hereby insured, provided always that its liability in respect to any one such collision shall not exceed its proportionate part of the value of the Vessel hereby insured. And in cases where the liability of the Vessel has been contested, or proceedings have been taken to limit liability, with the consent in writing of the Underwriter, it will also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of Cross-Liabilities as if the Owners or Charters of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the Underwriter; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured, or the Charterers, or the Surety, may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, structures, or any other objects (excepting other Vessels and property thereon), consequent on such collision, or in respect of the cargo, baggage or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim under this clause being made by anyone other than the Owners of the Vessel hereby insured, he shall not be entitled to recover in respect of any liability to which the Owners of the Vessel as such would not be subject, nor to a greater extent than the Owners would be entitled in such event to recover.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this Policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned at ——— this ———day of ——— 19—.

(Authorized underwriting agent)

By ————————————

Form MA-240-A (Revised 5-61)

UNITED STATES OF AMERICA

HULL WAR RISK AND STRIKES CLAUSES

Endorsement attached to and made part of Policy No. ———. It is agreed that this insurance covers only:

1. Those risks which would be covered by the attached Policy (including the Collision Clause) in the absence of the F. C. and S. warranty and which shall be deemed to include, specifically, the risks of hostilities or warlike operations, piracy, civil war, revolution, rebellion or insurrection or civil strife arising therefrom, floating and/or stationary mines and/or torpedoes whether derelict or not, weapons of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, and the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, but excluding arrest, restraint or detainment under customs or quarantine regulations and similar arrests, restraints or detainments not arising from actual or impending hostilities or sanctions.

2. Damage to or destruction of the property insured directly caused by strikers, locked out workmen, or persons taking part in labor disturbances or riots or civil commotions or caused by persons acting maliciously, but this paragraph shall not be construed to include or cover any loss, damage or expense caused by or resulting from delay, detention or loss of use. This insurance is subject, however, to the following warranties, exclusions and other provisions:

Warranted free from any claim for loss, damage or expense covered under any commercial policy in effect for the benefits of the assured.

Warranted free from any claim for loss, damage or expense which is or could be covered by a commercial war risk policy containing the American Institute Hull War Risk and Strikes Clauses (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses, December 1, 1977.

Warranted free from any claim for delay or demurrage and warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured.

Warranted free from any claim based upon loss of or frustration of the insured voyage or adventure caused by arrests, restraints or detainments, of kings, princes, or peoples.

Warranted free from any claim arising from capture, seizure, arrest, restraint, detainment, preemption, confiscation or requisition by the Government of the United States or of the country in which the Vessel is owned or registered or of the country in which any such right of requisition is vested.

The Franchise warranty in the attached Policy is waived and average will be payable irrespective of percentage and without deduction of new for old. The provisions of the attached Policy with respect to constructive total loss shall apply only to claims arising from physical damage to the insured Vessel.

If at the natural expiry time of this insurance the Vessel is at sea, this insurance will be extended, provided notice be given to the Underwriter as soon as practicable and an additional premium paid, if required, until midnight, G.m.t. of the day on which the Vessel enters the next port to which she proceeds and for 24 hours thereafter.

The "Breach of Warranty" clause in the Policy is deleted.

Warranted no War Risk Insurance in excess of the amount insured herein, whether for hull, machinery, disbursements, or other similar interests however described, exists or will be placed during the currency of this insurance, except as authorized by the Maritime Administrator, acting for the Secretary of Transportation.

Warranted no cancellation except by mutual consent; *Provided, however,* That if the Vessel shall be requisitioned by the United States on a basis whereby the United States provides the war risk insurance, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

For the purpose of determining liability under this policy for General Average contribution or Salvage and sue and labor expenses only, the sum insured herein or as stated in any binder of which this policy is a part, shall be deemed to be the "insured value."

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

Subpart C—War Risk Protection and Indemnity Insurance

§ 308.200 Amount of insurance for which application may be made.

An applicant for war risk protection and indemnity insurance shall state the amount of insurance desired but such amount shall not exceed $750 per gross ton of the Vessel.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended by Amdt. 1, 27 FR 4028, Apr. 27, 1962]

§ 308.201 [Reserved]

§ 308.202 Issuance of interim binder; its terms and conditions.

Upon acceptance of an application, an interim binder in form as set forth in § 308.3 will be issued and there shall be deemed to be incorporated therein by reference all the terms, conditions, and warranties contained in the application for war risk protection and indemnity insurance (set forth in § 308.3) and the standard war risk protection and indemnity insurance policy (set forth in § 308.207) to the same extent as if such application and policy were made a part of the binder.

Binder fee (not returnable) shall be $5 for each United States-flag LASH or similar type barge; $25 for all other United States-flag vessels; $10 for a foreign-flag LASH or similar type barge; and $50 for all other foreign-flag vessels. All fees are payable in United States funds by check to the order of "Maritime Adm.—Transportation".

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54095, Nov. 20, 1978; 50 FR 50167, Dec. 9, 1985]

§ 308.203 Sum which will be insured under interim binder.

The sum insured shall be the amount stated in the application, but not in excess of $750 per gross ton of the vessel.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended by Amdt. 1, 27 FR 4028, Apr. 27, 1962]

§ 308.204 Additional war risk protection and indemnity insurance.

Owners or charterers may obtain, on an excess basis, additional war risk protection and indemnity insurance in such amounts as desired and such insurance shall not inure to the benefit of the Maritime Administrator, as underwriter.

§ 308.205 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to, and all claim documents filed with, the Office of Trade Analysis and Insurance, Maritime Administration, Department of Transportation, Washington, DC, 20590.

[General Order 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 50 FR 50167, Dec. 9, 1985; 53 FR 8189, Mar. 14, 1988]

§ 308.206 [Reserved]

§ 308.207 Standard form of war risk protection and indemnity insurance policy.

The following is the standard form of war risk protection and indemnity insurance policy:

Form MA-241 (10-59)

Policy No. P. & I. ———

UNITED STATES OF AMERICA

Represented by the Maritime Administrator, acting for the Secretary of Transportation (sometimes hereinafter called the Underwriter), by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof, and in consideration of the stipulations herein named and of ——— dollars, being premium at the rate of ———, does insure ——— hereinafter called the Assured.

Loss, if any, payable to ——— or order. In the sum of ——— dollars at and from the ——— day of ——— 19—, ——— time until the ——— day of ——— 19—, ——— time, against the liabilities of the Assured as hereinafter described, and subject to the terms and conditions hereinafter set forth, in respect of the vessel ——— (Vessel) ——— (Official No.) (or by whatsoever other name or names the said vessel is or shall be called).

The Underwriter undertakes to make good to the Assured all such loss and/or damage and/or expense as the Assured shall, as owner of the vessel named herein, have become legally liable to pay and shall pay on account of the liabilities, risks, events and/or happenings herein set forth:

Loss of life, injury, and illness. (1) Liability for life salvage, loss of life of, or personal injury to, or illness of, any person, not including, however, unless otherwise agreed by endorsement hereon, liability to an employee (other than a seaman) of the Assured or, in case of his death, to his beneficiaries under any compensation act. Liability hereunder shall also include burial expenses not exceeding $200, where reasonably incurred by the Assured for the burial of any seaman. The term Person as aforesaid shall include any person or, persons carried on the insured vessel.

(a) Insurance hereunder shall not cover any liability under the provisions of Pub. L. 267, 64th Congress, approved September 7, 1916, as amended, now known as the Federal Employees Compensation Act, or under the provisions of section 2(c) of Pub. L. 17, 78th Congress, approved March 24, 1943, as amended.

(b) Insurance hereunder in connection with the handling of cargo for the insured vessel shall commence from the time of receipt by the Assured of the cargo on dock or wharf, or on craft alongside for loading, and shall continue until due delivery thereof from dock or wharf of discharge or until discharge from the insured vessel onto a craft alongside.

Repatriation expenses. (2) Liability for expenses reasonably incurred in necessarily repatriating any member of the crew or any other person employed on board the insured vessel: *Provided, however,* That the Assured shall not be entitled to recover any such expenses incurred by reason of the expiration of the shipping agreement, other than by sea perils, or by the voluntary termination of the agreement. Wages shall be recoverable hereunder only when payable under statutory obligation during unemployment due to the wreck or loss of the insured vessel.

Collision. (3) Liability for loss or damage arising from collision of the insured vessel with another ship or vessel insofar as such liability is excluded from the liabilities insured under the following four-fourths Collision Clause in the United States of America Hull Policy (MA-240): "And it is further agreed that if the Vessel hereby insured shall come into collision with any other Ship or Vessel and the Assured or the Charterers or the Surety in consequence of the insured Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriter will pay the Assured, or the Charterers, or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as its subscription hereto bears to the value of the vessel hereby insured, provided always that its liability in respect to any one such collision shall not exceed its proportionate part of the value of the Vessel hereby insured. And in cases where the liability of the Vessel has been contested, or proceedings have been taken to limit liability, with the consent in writing of the Underwriter it will also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of Cross-Liabilities as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the Underwriter; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured, or the Charterers, or the Surety, may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, structures, or any other objects (excepting other Vessels and property thereon), consequent on such collision or in respect of the cargo, baggage or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim under this clause being made by anyone other than the Owners of the Vessel hereby insured, he shall not be entitled to recover in respect of any liability to which the Owners of the Vessel as such would not be subject, nor to a greater extent than the Owners would be entitled in such event to recover."

Provided, however, That insurance hereunder shall not extend to any liability, whether direct or indirect, in respect of the engagements of or the detention or loss of time of the insured vessel.

(a) Claims hereunder shall be settled on the principles of Cross-Liabilities to the same extent only as provided in the four-fourths Collision Clause above mentioned.

(b) Where both vessels are the property, in part or in whole, of the same Owners or Charterers, claims hereunder shall be settled on the basis of the principles set forth in the four-fourths Collision Clause above mentioned.

(c) Claims hereunder shall be separated among the several classes enumerated in this policy and each class shall be subject to the special conditions applicable in respect to such class.

(d) Notwithstanding the foregoing, the Underwriter shall not be liable for any claims hereunder where the various liabilities resulting from such collision, or any of them, have been compromised, settled or adjusted without the written consent of the Underwriter.

Damage caused otherwise than by collision. (4) Liability for loss of or damage to any other vessel or craft, or to property on board such other vessel or craft, caused otherwise than by collision of the insured vessel with another vessel or craft.

(a) Where such other vessel or craft or property on board such other vessel or craft belongs to the Assured, claims hereunder shall be adjusted as if it belonged to a third person: *Provided, however,* That if such vessel, craft or property be insured, the Underwriter shall be liable hereunder only insofar as the loss or damage, but for the insurance herein provided, is not or would not be recoverable by the Assured under such other insurance.

Damage to docks, buoys, etc. (5) Liability for damage to any dock, pier, jetty, bridge, harbor, breakwater, structure, beacon, buoy, lighthouse, cable or to any fixed or movable object or property whatsoever, except another vessel or craft or property on another vessel or craft or on the insured vessel unless elsewhere covered herein.

(a) Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Assured, the Underwriter shall be liable as if such damaged property belonged to another, but only for the excess over any amount recoverable under any other insurance applicable on the property.

Wreck removal. (6) Liability for costs or expenses of or incidental to the removal of the wreck of the insured vessel if legally liable therefor: *Provided, however,* That:

(a) From such costs and expenses shall be deducted the value of any salvage from or which might have been recovered from the wreck inuring, or which might have inured, to the benefit of the Assured;

(b) The Underwriter shall not be liable for any costs or expenses which would be covered by full insurance under the United States of America Hull Policy (MA-240);

(c) In the event that the wreck of the insured vessel is upon property owned, leased, rented or otherwise occupied by the Assured, the Underwriter shall be liable for any liability for removal of the wreck which would be imposed upon the Assured by law in the absence of contract if the wreck had been upon the property belonging to another, but only for the excess over any amount recoverable under any other insurance applicable thereto.

Cargo. (7) Liability for loss of or damage to or in connection with cargo or other property (except mail or parcel post), including baggage and personal effects of persons other than members of the crew, and not exceeding $100 per person, to be carried, carried, or which has been carried on board the insured vessel: *Provided, however,* That no liability shall exist hereunder for:

Specie, bullion, jewelry, etc. (a) Loss, damage or expense incurred in connection with the custody, carriage or delivery or specie, bullion, precious stones, precious metals, jewelry, silks, furs, banknotes, bonds or other negotiable documents, or similar valuable property;

Refrigeration. (b) Loss, damage or expense arising out of or in connection with the care, custody, carriage or delivery of cargo requiring refrigeration, unless the spaces, apparatus, and means used for the care, custody and carriage thereof have been surveyed by a classification or other competent disinterested surveyor under working conditions before the commencement of each round voyage unless otherwise agreed and found in all respects fit, and unless the Underwriter has approved in writing the form of contract under which such cargo is accepted for transportation;

Deviation. (c) Loss, damage or expense arising from any deviation, or proposed deviation, not authorized by the contract of affreightment, known to the Assured in time to insure specifically the liability therefor, unless notice thereof is given to the Underwriter and the Underwriter agrees, in writing, that such insurance is unnecessary;

Stowage in improper spaces. (d) Loss, damage or expense arising with respect to under deck cargo stowed on deck or with respect to cargo stowed in spaces not suitable for its carriage, unless the Assured shall show that every reasonable precaution has been taken by him to prevent such improper stowage;

Misdescription of goods. (e) Loss, damage or expense arising out of or as a result of the issuance of bills of lading which, to the knowledge of the Assured, improperly described the goods or their containers as to condition or quantity;

(f) Loss, damage or expense arising from issuance of clean bills of lading for goods known to be missing, unsound or damaged;

(g) Loss, damage or expense arising from the intentional issuance of bills of lading prior to receipt of the goods described therein, or covering goods not received at all;

(h) Loss, damage or expense arising from delivery of cargo without surrender of order bills of lading;

Freight. (i) Freight on cargo short-delivered, whether or not prepaid or whether or not included in the claim and paid by the Assured: *And provided further,* That:

(j) Liability hereunder shall in no event exceed that which would be imposed by law in the absence of contract;

Protective clauses required in contract of affreightment. (k) Liability hereunder shall be limited to such as would exist if the charter party, bill of lading, or contract of affreightment contained (i) a negligence general average clause in the form hereinafter specified under paragraph (12); (ii) a clause providing that any provision of the charter party, bill of lading, or contract of affreightment to the contrary notwithstanding, the Assured and the insured vessel shall have the benefit of all limitations of and exemptions from liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force; (iii) such clauses, if any, as are required by law to be stated therein; (iv) and such other protective clauses as are generally in use in the particular trade;

Carriage of Goods by Sea Act. (l) When cargo carried by the insured vessel is under a bill of lading or similar document of title subject or made subject to the Carriage of Goods by Sea Act of the United States or a law of any other country of similar import, liability hereunder shall be limited to such as is imposed by said Act or law, and if the Assured or the insured vessel assumes any greater liability or obligation, either in respect of the valuation of the cargo or in any other respect, then the minimum liabilities and obligations imposed by said Act or law, such greater liability or obligation shall not be covered hereunder;

Limit of $500 per package. (m) When cargo carried by the insured vessel is under a charter party, bill of lading, or contract of affreightment not subject or made subject to the Carriage of Goods by Sea Act of the United States or a law of any other country of similar import, liability hereunder shall be limited to such as would exist if said charter party, bill of lading, or contract of affreightment contained a clause exempting the Assured and the insured vessel from liability for losses arising from unseaworthiness provided that due diligence shall have been exercised to make the vessel seaworthy and properly manned, equipped, and supplied, and a clause limiting the Assured's liability for total loss or damage to goods shipped to $500 per package, or in case of goods not shipped in packages, per customary freight unit, and providing for pro rata adjustment on such basis for partial loss or damage. The provisions of clauses (k), (l) and (m) herein may, however, be waived or altered by the Underwriter on terms agreed in writing;

Oral contract. (n) In the event cargo is carried under an arrangement not reduced to writing, the Underwriter's liability hereunder shall be no greater than if such cargo had been carried under a charter party, bill of lading or contract of affreightment containing the clauses referred to herein;

Assured's own cargo. (o) Where cargo on board the insured vessel is the property of the Assured, such cargo shall be deemed to be carried under a contract containing the protective clauses described in clauses (k), (l) and (m) herein; and such cargo shall be deemed to be fully insured under the usual form of cargo policy, and in case of loss of or damage to such cargo the Assured shall be insured hereunder in respect of such loss or damage only to the extent that he would have been if the cargo had belonged to another, but only in the event and to the extent that the loss or damage would not be recoverable from marine insurers under a cargo policy as above specified;

Transportation on land or on another vessel or craft. (p) No liability shall exist hereunder for any loss, damage or expense in respect of cargo or other property, including baggage and personal effects of persons other than members of the crew, being transported on land or on another vessel or craft;

Cargo on dock. (q) No liability shall exist hereunder for any loss, damage or expense in respect of cargo or other property, including baggage and personal effects of persons other than members of the crew, before loading on or after discharge from the insured vessel caused by flood, tide, windstorm, earthquake, fire, explosion, heat, cold, deterioration, collapse of wharf, leaky shed, theft, or pilferage unless such loss, damage or expense is caused directly by the insured vessel, her master, officers or crew.

Fines and penalties. (8) Liability for fines and penalties for the violation of any laws of the United States, or of any State thereof, or of any foreign country: *Provided, however,* That the Underwriter shall not be liable to indemnify the Assured against any such fines or penalties resulting directly or indirectly from the failure, neglect or fault of the Assured or its managing officers to exercise the highest degree of diligence to prevent a violation of any such laws.

Mutiny, misconduct. (9) Liability for expenses incurred in resisting any unfounded claim by the master or crew or other person employed on board the insured vessel, or in prosecuting such person or persons in case of mutiny or other misconduct; not including, however, costs of successfully defending claims elsewhere protected in this policy.

Quarantine expenses. (10) Liability for extraordinary expenses, incurred in consequence of the outbreak of plague, or other disease on the insured vessel, for disinfection of the vessel or of persons on board, or for quarantine expenses not being the ordinary expenses of loading or discharging, nor the ordinary wages or provisions of crew or passengers: *Provided, however,* That no liability shall exist hereunder if the vessel be ordered to proceed to a port where it is known that she will be subjected to quarantine.

Putting in expenses. (11) Liability for port charges incurred solely for the purpose of putting into land an injured or sick seaman, and the net loss to the Assured in respect of bunkers, insurance, stores and provisions as the result of the deviation.

Cargo's proportion G/A. (12) Liability for Cargo's proportion of General Average, including special charges, so far as the Assured cannot recover the same from any other source: *Provided, however,* That if the charter party, bill of lading or contract of affreightment does not contain the negligence general average clause quoted below, the Underwriter's liability hereunder shall be limited to such as would exist if such clause were contained therein, viz:

Negligence G/A clause. "In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belong to strangers."

Expenses and law costs. (13) Liability for costs, charges and expenses reasonably incurred and paid by the Assured in connection with any liability insured under this policy, provided that the Assured shall not be entitled to indemnity for the cost or expense of prosecuting or defending any claim or suit unless the same shall have been incurred with the approval in writing of the Underwriter, or the Underwriter shall be satisfied that such approval could not have been obtained under the circumstances without unreasonable delay, or that the expenses were reasonably and properly incurred. The cost and expense of prosecuting any claim in which the Underwriter shall have an interest by subrogation or otherwise shall be divided between the Assured and the Underwriter in proportion to the amounts which they would have been entitled to receive respectively, if the suit should be successful.

(14) Expenses which the Assured may incur under authorization of the Underwriter in the interest of the Underwriter.

GENERAL CONDITIONS AND LIMITATIONS

Prompt notice of claim. (15) In the event of any happening which may result in loss, damage or expense for which the Underwriter may become liable, prompt notice thereof, on being known to the Assured, shall be given by the Assured to the Underwriter, but failure to give such prompt notice because of wartime emergency conditions shall not prejudice this insurance. The Underwriter shall not be liable for any claim not presented to the Underwriter with proper proofs of loss within twenty-four (24) months after payment by the Assured.

Time for suit. (16) In no event shall suit on any claim be maintainable against the Underwriter unless commenced within twenty-four (24) months after the loss, damage or expenses resulting from liabilities, risks, events, occurrences and expenditures specified under this policy shall have been paid by the Assured.

Settlement of claims. (17) The Assured shall not make any admission of liability, either before or after any occurrence, which may result in a claim for which the Underwriter may be liable. The Assured shall not interfere in any negotiations of the Underwriter for settlement of any legal proceedings in respect of any occurrences for which the Underwriter is liable under this policy; *Provided, however,* That in respect of any occurrence likely to give rise to a claim under this policy, the Assured is obligated to and shall take such steps to protect his and the Underwriter's interests as would reasonably be taken in the absence of this or similar insurance. If the Assured shall fail or refuse to settle any claim as authorized or directed by the Underwriter, the liability of the Underwriter to the Assured shall be limited to the amount for which settlement could have been made or, if the amount is unknown, to the amount which the Underwriter authorized.

Defense of claims. (18) Whenever required by the Underwriter, the Assured shall aid in securing information and evidence and in obtaining witnesses and shall cooperate with the Underwriter in the defense of any claim or suit or in the appeal from any judgment, in respect of any occurrence as hereinbefore provided.

Assumed contractual liability. (19) Unless otherwise agreed by endorsement hereon, the Underwriter's liability shall in no event exceed that which would be imposed on the Assured by law in the absence of contract: *Provided, however,* That the Assured's right of indemnity from the Underwriter shall include any loss, damage or expense covered under the provisions of this policy arising as a result of any contract for the employment of tugs where such contract is one which is substantially similar to those customarily in use or in force during the currency of this policy. The Assured's right of indemnity hereunder shall not include any liability for loss, damage or expense arising from collision between the insured vessel and another vessel or craft, other than liability consequent on such collision, (a) for removal of obstructions under statutory powers, (b) for damage to any dock, pier, jetty, bridge, harbor, breakwater, structure, beacon, buoy, lighthouse, cable or similar structures, (c) in respect of the cargo of the insured vessel and (d) for loss of life, personal injury and illness.

Assignment. (20) No claim or demand against the Underwriter shall be assigned or transferred, and no person, other than a receiver of the property or the estate of the Assured, shall acquire any right against the Underwriter without the express consent of the Underwriter: *Provided, however,* That this shall not affect the rights of any assignee under an assignment made by virtue of any governmental order or decree, in which event such assignee shall have and possess all of the rights of its predecessor in assignment.

Subrogation. (21) The Underwriter shall be subrogated to all the rights which the Assured may have against any other person or entity, in respect of any payment made under this policy, to the extent of such payment, and the Assured shall, upon the request of the Underwriter, execute all documents necessary to secure to the Underwriter such rights.

Double insurance. (22) The Underwriter shall not be liable for any loss or damage against which, but for the insurance hereunder, the Assured is or would be insured under existing insurance excepting as provided in paragraph (1)(a) hereof.

Limitation of liability. (23) If and when the Assured under this policy has any interest other than as an owner or bareboat charterer of the insured vessel, in no event shall the Underwriter be liable hereunder to any greater extent that if such Assured were the owner or bareboat charterer and were entitled to all the rights of limitation to which a shipowner is entitled.

Risks excluded. (24) Notwithstanding anything to the contrary contained in this policy, the Underwriter shall not be liable for any loss, damage, or expense sustained, directly or indirectly by reason of:

(a) Loss, damage, or expense to hull, machinery, equipment or fittings of the insured vessel, including refrigerating apparatus and wireless equipment, whether or not owned by the Assured;

(b) Cancelment or breach of any charter or contract, detention of the vessel, bad debts, insolvency, fraud of agents, loss of freight, passage money, hire, demurrage, or any other loss of revenue;

(c) Any loss, damage, sacrifice, or expense which would be payable under the terms of the United States of America Hull Policy (MA-240), on hull, machinery, etc., whether or not the insured vessel is fully covered by insurance sufficient in amount to pay such loss, damage, sacrifice or expense;

(d) The insured vessel towing any other vessel or craft, unless such towage was to assist such other vessel or craft in distress to a port or place of safety: *Provided, however,* That this exception shall not apply to claims covered under paragraph (1) of this policy;

(e) For any claim for loss of life, personal injury or illness in relation to the handling of cargo where such claim arises under a contract of indemnity between the Assured and his subcontractor.

F. C. and S. Clause. (25) Notwithstanding anything to the contrary contained in this policy, the Underwriter shall not be liable for or in respect of any loss, damage or expense, sustained by reason of capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat; or sustained in consequence of military, naval or air action by force of arms, including mines and torpedoes or other missiles or engines of war, whether of enemy or friendly origin; or sustained in consequence of placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; and any such loss, damage and expense shall be excluded from this policy without regard to whether the Assured's liability therefor is based on negligence or otherwise, and whether before or after a declaration of war.

(26) Liability hereunder in respect of any one accident or occurrence is limited to the amount hereby insured.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned at ——— this ——— day of ——— 19—.

(Authorized underwriting agent)

By ————————————————

Form MA-241-A (10-59)

UNITED STATES OF AMERICA

WAR RISK PROTECTION AND INDEMNITY CLAUSES

Endorsement attached to and made part of Policy No. P. & I. ———

(1) This insurance to cover only the liability of the Assured for those protection and indemnity risks excluded from the Marine Protection and Indemnity Policy, to which these clauses are attached, by the F.C. & S. Clause contained therein.

(2) This insurance also to cover liability of the Assured for (a) strikes, riots and civil commotions and (b) for contractual repatriation expenses of any member of the crew as a result of perils excluded by the aforesaid F.C. & S. Clause.

(3) Claims for which the Underwriter shall be liable under these clauses shall not be subject to any deduction.

(4) The liability of the Underwriter under these clauses in respect of any one accident or series of accidents arising out of the same casualty shall be limited to the sum hereby insured, but not exceeding $250 per gross ton of the vessel.

(5) In the event of loss or shipwreck of the vessel from any cause prior to the natural expiry of this policy, this insurance shall continue to cover the liability of the Assured to the crew of the insured vessel, subject to its terms and conditions and at an additional premium if so required by the Underwriter, until the crew shall be either discharged or landed at a port or place to

which the owners or charterers are obliged to bring them.

(6) If at the natural expiry time of this insurance the vessel is at sea, this insurance will be extended, provided notice be given to the Underwriter as soon as practicable and an additional premium paid, if required, until midnight, G.M.T. of the day on which the vessel enters the next port to which she proceeds and for 24 hours thereafter.

(7) Warranted no cancellation except by mutual consent: *Provided, however,* That if the vessel shall be requisitioned by the United States on a basis whereby the United States provides the war risk insurance, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

(8) Notwithstanding any of the foregoing provisions, all liabilities covered by the Second Seamen's form of policy are excluded from this insurance.

(9) Warranted free from any claim for loss, damage or expense covered under any commercial policy in effect for the benefit of the assured.

(10) Warranted free from any claim for loss, damage or expense which is or could be covered by a commercial war risk policy containing the American Institute Hull War Risk and Strikes Clauses (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses, December 1, 1977.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

Subpart D—Second Seamen's War Risk Insurance

§ 308.300 Amounts of insurance for which application may be made.

An applicant for Second Seamen's war risk insurance shall not state the amount of insurance desired, which shall be as provided in § 308.303.

§ 308.301 [Reserved]

§ 308.302 Issuance of interim binder; its terms and conditions.

Upon acceptance of an application, an interim binder in form as set forth in § 308.3 will be issued and there shall be deemed to be incorporated therein by reference all the terms, conditions, and warranties contained in the application for Second Seamen's war risk insurance (set forth in § 308.3) and the Second Seamen's War Risk Policy (1955) (set forth in § 308.306) to the same extent as if such application and policy were made a part of the binder. Binder fee (not returnable) shall be $75 for a United States-flag vessel and $150 for a foreign-flag vessel. All fees are payable in United States funds by check to the order of "Maritime Adm.—Transportation"

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54095, Nov. 20, 1978; 50 FR 50167, Dec. 9, 1985]

§ 308.303 Sums which will be insured under interim binder.

The sums insured are the amounts specified in the Second Seamen's War Risk Policy (1955) or as modified by shipping articles, collective bargaining agreements or other applicable employment agreements which are in effect as of the date of a casualty involving the subject vessel. Upon the attachment of this binder, the number of crew members and modified benefits payable as of that date shall be declared immediately to the Underwriting Agent that issued the binder. Any subsequent changes shall be likewise declared.

§ 308.304 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to, and all claim documents filed with, the Maritime Administration, Attention: Director, Office of Trade Anaysis and Insurance, Washington, DC, 20590.

[26 FR 4541, May 26, 1961, as amended at 53 FR 8189, Mar. 14, 1988]

§ 308.305 [Reserved]

§ 308.306 Standard form of Second Seamen's War Risk Policy (1955).

(a) *Standard form.* The following is the standard form of Second Seamen's War Risk Policy (1955):

Form MA-242 (10-59)

United States of America

Department of Transportation

Maritime Administration

SECOND SEAMEN'S WAR RISK POLICY

(1955 Standard Form)

Crew Life, Disability, Loss of Effects, and Detention.

No. SSWR———————
Date———————

Total number of men insured for life and injury ——— for $——— each.

		Premium
Total amount insured, life or injury.	$— Rate—%	$..........
Total amount insured, personal effects.	$— Rate—%	$..........
Total amount annual wages and emergency wages.	$— Rate—%	$..........
Total premium..		$..........

The United States of America (herein called the "Underwriter"), represented by the Maritime Administrator (herein called "Administrator"), acting for the Secretary of Transportation, in consideration of the payment by ——— (herein, for identification purposes only, called the "Operator") of a premium of $———, and in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XII, Merchant Marine Act, 1936, as amended, insures the master, officers and crew, as hereinafter set forth, of the vessel ———(Official No. ———), during the period described herein commencing on or about ——— against loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided), from the perils and causes hereinafter stated, payable in case of claim in funds current in the United States in accordance with the following schedules and as hereinafter stated.

Schedule 1—Loss of Life

Master, officers and crew, each ——— $5,000

The amount for which each person is covered by this schedule is the principal sum.

Schedule 2—Disability, Including Dismemberment and Loss of Function

For disability proximately caused by the risks and perils insured against herein, and which arises within ninety days from the date of the happening of such risks and perils, and for dismemberment and loss of function caused by the risks and perils insured against herein, and which result from such a disability or otherwise occur within ninety days from the happening of such risks or perils, the Underwriter will pay to the insured the benefits set forth in the stipulations and conditions.

Schedule 3—Crew Effects

For loss of or damage to the personal effects of the master, officers or members of the crew proximately caused by the risks and perils insured against herein, the Underwriter will pay the amount set forth in the Stipulations and Conditions for the loss of or damage to said effects during the entire period of this policy as hereinafter set forth, and for the loss of or damage to effects proximately caused by the risks and perils insured against herein, purchased or otherwise acquired during the policy to replace effects lost or damaged by the risks and perils insured against herein, the Underwriter will pay not exceeding $50.00 for each such loss or damage.

Schedule 4—Detention and Repatriation Benefits

For detention of the master, officers or members of the crew during the period covered by this policy, and under other situations hereinafter provided, the Underwriter will pay benefits to the insured or for his or their account, as set forth in the stipulations and conditions.

This policy is made and accepted subject to the foregoing and to the following:

Stipulations and Conditions

Art.
1. Persons insured.
2. Additional insurance.
3. Risks and perils.
4. Period of coverage.
5. Extension of period of coverage.
6. Payment for loss of life.
7. Beneficiaries of insurance for loss of life.
8. (A) Designation and change of beneficiary; (B) continuing designation.
9. Claims.
10. Time for payment of insurance for loss of life.
11. Proof of death.
12. Disability and dismemberment.
13. Physical examination.
14. Personal effects defined.
15. Amount of payment for loss of, or damage to, personal effects.
16. Death of an insured prior to payment for loss of or damage to personal effects.
17. Detention and repatriation benefits.
18. Payment constituting a discharge.
19. Nonassignability.
20. Amount permitted to be paid agents or attorneys.
21. Notice of loss and claim.
22. Limitation of suit.
23. Deviation and change of voyage.

24. "Administrator" defined.
25. Multiple claims against the United States.
26. Amendments and modifications.
27. Payment of premium and cancellation.
28. Extension.

ARTICLE 1. *Persons insured.* The persons insured by this policy are the master, officers and crew of the vessel described on the face of this policy. Except as to merchant seamen, membership in the vessel's gun crew shall not of itself constitute an individual member of the crew of the vessel, as that phrase is used herein. Any person or persons insured under any other or similar policy, including the Second Seamen's War Risk Policy (1952), insuring against loss of life or disability (including dismemberment and loss of function) or loss of or damage to personal effects or detention (including the occurrence of other situations hereinafter provided) shall not to the extent of such prior coverage, be entitled to coverage under this policy while such other insurance is in force and effect.

ART. 2. *Additional insurance.* In the event that any person is employed as a master or officer or member of the crew of said vessel after the commencement of the voyage, the amount of the premium shall be increased proportionately, provided, however, that the failure to pay such additional premium shall not affect the additional coverage.

ART. 3. *Risks and perils.* The insurance is for loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided) of the insured, directly and proximately caused by risks of war and warlike operations, including capture, seizure, destruction by men-of-war, sabotage, piracy, takings at sea, arrests, restraints and detainments, acts of kings, princes and peoples in the prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, scuttling to prevent capture, aerial bombardment, or, attempts at, or measures taken in defense of, all of the foregoing acts, floating or stationary mines, torpedoes, whether derelict or not, collision caused by failure, in compliance with wartime regulations, or said vessel or any vessel with which she is in collision, to show the usual full peacetime navigation or anchorage lights, stranding caused by the absence of lights, buoys, or similar peacetime aids to navigation consequent upon wartime regulations, stranding caused by the failure of said vessel to employ a pilot in waters where a pilot would ordinarily be employed in peacetime, but in which the employment of a pilot is dispensed with in compliance with military, naval or other governmental orders, or with a view to avoiding imminent enemy attack (for the purposes of the foregoing, the failure to show lights, the absence of lights, buoys, etc., and the failure to employ a pilot shall be presumed to be the cause of the collision or stranding unless the contrary be proved, and stranding shall include sinking consequent upon stranding or contact with any part of the land), collision with another vessel in the same convoy or collision with any military or naval vessel, that is to say, a vessel manned by and under the control of military or naval personnel and designed to be employed primarily in armed combat service, stranding, collision or contact with any external substance (including ice, but excluding water), as a result of deliberately placing the vessel in jeopardy, in compliance with military, naval or other governmental orders in order to avoid imminent enemy attack, or as an act or measure of war taken in the actual process of embarking or disembarking troops or loading or unloading material of war.

The fact that a vessel, or any vessel with which such vessel is in collision, is carrying troops or military or other supplies, or is proceeding to or from a war base, or is manned or operated by military or naval personnel, shall not alone be sufficient to include in this policy any claim which is not included by the foregoing terms of this article.

The insurance is also for loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided) of the insured, directly and proximately resulting from stranding, sinking, or breakup of the vessel, explosion or fire causing loss of or substantial damage to the vessel or collision by the vessel or contact with any external substance (including ice, but excluding water), irrespective of whether the same are caused by risks of war or warlike operations or by marine risks and perils.

The word "vessel" shall include any waterborne conveyance used to transport the insured to and from the vessel on which he is employed, and shall also include any airborne conveyance used to transport the insured pursuant to instructions or permission of the Maritime Administration or its agents.

ART. 4. *Period of coverage.* The period of coverage for each person covered hereunder is:

From the time such person signs the articles or enters into a contract of employment for the voyage of the aforesaid vessel, or, if already on articles for a series of voyages or period of time, from the inception of the aforesaid voyage (i.e., when the vessel is ready to begin the loading of cargo for the aforesaid voyage or to sail in ballast) or, if employed subsequent to the commencement of the voyage, from the time of such employment.

Until such person shall be returned to a place within the continental United States, excluding Alaska, including any period of capture or internment.

Unless sooner terminated by desertion, discharge, accepting employment on another vessel for a purpose other than to be repatriated, or the refusal without good cause to return to the continental United States, excluding Alaska, from any place outside thereof, in any of which events the coverage under this policy shall be at an end. (The term "discharge," as used in this paragraph, does not include instances in which the insured leaves the vessel for medical or hospital treatment or for other causes deemed good and sufficient in the opinion of the Administrator.)

ART. 5. *Extension of period of coverage.* If the insured returns to the continental United States, excluding Alaska, on a vessel which touches or stays at a place or places within the continental United States, excluding Alaska, other than the place of termination of the voyage and the vessel thence proceeds to such place of termination, the period of coverage in respect to each person covered hereunder who continues to be on board such vessel is extended to the termination of the voyage.

ART. 6. *Payment for loss of life.* The amount of the payment for loss of life shall be the principal sum stated on the face of this policy, subject, however, to any deductions or additions hereinafter contained.

Payment for loss of life shall be made in a lump sum except that when—

(a) In the opinion of the Administrator conclusive proof of death is not present, or

(b) The insured at the time of designating a beneficiary or beneficiaries requests on the form provided therefor that the amount payable for the loss of life be paid in installments, or

(c) The beneficiary or beneficiaries request in writing that the payment for loss of life be made in installments. Payment for loss of life may, in the discretion of the Administrator, be made in monthly installments not exceeding twenty-four, in which event no interest is to be added or paid. By requesting payment in installments, the insured and the beneficiary or beneficiaries agree on behalf of themselves, their heirs, executors and administrators to be bound by the provisions of paragraph B, article 7 hereof, as well as all other provisions contained herein. The beneficiary or beneficiaries may at any time upon written request obtain a lump sum payment of the entire amount yet unpaid if payment is being made in installments pursuant to the written request of the beneficiary or beneficiaries. If payment has been commenced in installments and the principal sum is not yet exhausted, the Administrator, in his sole discretion and at any time may direct that payment of the balance of the principal sum be paid in a lump sum or in installments of different or varying amounts, provided, however, that all of the principal sum be paid within twenty-four months from the time that the first payment is made.

If any payments are made under article 12 hereof, the total amount of such payments shall be deducted from the amount of the principal sum payable under this policy for loss of life.

If the personal effects of an insured are lost or damaged under circumstances where payment would be due under the terms hereof to said person for such loss or damage and said person either before or after such loss or damage dies, his death being proximately caused by the risks and perils insured against herein, the amount which would have been payable for the loss of or damage to such personal effects had he survived shall be added to the principal sum hereof and shall be payable to the beneficiary of the insurance for loss of life.

ART. 7. *Beneficiaries of insurance for loss of life.* A. The insurance shall be payable only to a lawful widow or widower, child (the latter term including a posthumous child, a child legally adopted by the insured, and, if designated, a child in relation to whom the insured stood in loco parentis, and a step-child or acknowledged illegitimate child), parent (including a step-parent, parent by adoption and, if designated, a person who stood in the place of a parent to the insured), brother or sister (including, if designated, step-brothers or step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption), grandparents, grandchildren, and, if designated, nephews, nieces, aunts or uncles, of the insured.

(1) The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes above provided, and shall, in the manner hereinafter described, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the above classes. A person or persons so designated shall be known as the primary beneficiary or beneficiaries.

(2) The insured shall have the right also to designate any other person or persons, but only within the above classes, to whom the insurance shall be paid if the beneficiary or beneficiaries designated shall die before the insurance or any portion thereof shall be paid. A person or persons so desig-

nated shall be known as the contingent beneficiary or beneficiaries.

(3) If the insured fails to designate a beneficiary or if the beneficiary or beneficiaries, whether primary or contingent, die before the insurance or any portion thereof shall be paid, the insurance will, subject to the provisions of paragraph B hereof, be paid to the beneficiary or beneficiaries within the following classes and in the order named:

(a) If the insured shall be survived by a lawful widow or widower but without any child of him or her surviving, 100 percent to such widow or widower.

(b) If the insured shall be survived by a lawful widow or widower and a child or children of him or her surviving, 50 percent to the widow or widower and 50 percent to the child or children in equal shares.

(c) If the insured shall have no lawful widow or widower of him or her surviving but shall have a child or children of him or her surviving, 100 percent to the child or children in equal shares.

(d) If there shall be no lawful widow or widower or children of the insured of him or her surviving, 100 percent to the parent or parents of the insured in equal shares.

(e) If there shall be no lawful widow or widower, child or parent of him or her surviving, 100 percent to the brothers, sisters, grandparents and grandchildren of the insured in equal shares. The persons in these classes shall be known as the schedule beneficiaries. As used in this subdivision (3), the term "child" includes a posthumous child and a child legally adopted by the insured, and the term "parent" includes a stepparent and a parent by adoption.

B. The right of any beneficiary to payment of the insurance, or any unpaid installment thereof, shall be conditioned upon his or her being alive to receive payment. No person shall have a vested right to any such insurance or any installment of any such insurance. No insurance shall be paid to the heir or heirs or executors or administrators of the insured or of any beneficiary.

Any insurance or any installment thereof not paid to a primary beneficiary because of his or her death shall be paid to the schedule beneficiary or beneficiaries first or next entitled to priority as hereinabove provided, unless a contingent beneficiary has been designated, in which event payment shall be made to the contingent beneficiary. Any such insurance or any installment thereof not paid to a contingent beneficiary because of his or her death shall be paid to the schedule beneficiary or beneficiaries first or next entitled to priority as hereinabove provided. If, however, the insured has designated more than one primary beneficiary or more than one contingent beneficiary and if such a primary beneficiary or contingent beneficiary dies before the insurance or an installment thereof, to which he or she may otherwise be entitled, is paid, such insurance or installment thereof shall be paid to the surviving primary or contingent beneficiary, as the case may be.

Any payments of insurance made to a person represented by the insured to be within the permitted classes of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligation of the United States under this insurance policy.

ART. 8. A. *Designation and change of beneficiary.* The designation of a beneficiary or the change in a designation of beneficiary shall be in writing upon a form or forms and in a manner prescribed by the Administrator, signed by the insured, witnessed either by the Shipping Commissioner or a licensed officer of the vessel, and shall contain the name, address and relationship of the beneficiary to the insured. No designation of a beneficiary and no change of a beneficiary shall be valid unless the instrument containing the designation or change is received by the Administrator at his office in the General Accounting Office Building, 441 G Street NW., Washington, DC 20590: *Provided, however,* That the instrument when received shall be considered as valid as of the time of its execution. Whenever it shall appear to the satisfaction of the Administrator that unusual circumstances existed preventing or substantially preventing the designation or change of beneficiary in the manner or form hereinabove set forth and that the interests of justice would be served, he may waive or disregard the failure to comply with such manner and form and recognize as valid an act intended as a designation or a change of beneficiary. The recognition as valid by the Administrator of such an act shall be conclusive and binding upon all persons and payment or payments pursuant thereto shall be a pro tanto discharge of the obligation of the United States under this policy.

B. *Continuing designation.* As to any individual insured under the Second Seaman's War Risk Policy form as amended or changed from time to time, the beneficiary or beneficiaries first designated by such insured to receive the proceeds of the insurance provided by such form shall (subject to the limitations of paragraph B, article 7 hereof), if properly designated, continue to be the beneficiary or beneficiaries of any subsequent insurance provided by such form without further designation unless and until such initial designation is effectively revoked or changed. In the event of an effective revocation unaccompanied by a new designation, the insurance proceeds shall be disposed of in accordance with the provisions of paragraph A, subdivision (3), article 7, hereof. In the event of an effective change of beneficiary or beneficiaries, the new beneficiary or beneficiaries so designated shall for all purposes, including the purposes of this paragraph, be considered as the initial designee or designees, and such designation shall continue to be effective as to all insurance provided by this form of policy until revoked or changed. Subsequent revocations and changes shall for all purposes be treated as would be the preceding revocations or changes, if any.

ART. 9. *Claims.* No claim for insurance for loss of life shall be recognized unless presented in writing to the underwriter. Any payment or payments of the insurance or the installments thereof made prior to the presentation of claim shall be conclusively deemed to have been properly made under this policy and in complete discharge of the obligation of the United States under this policy to the extent thereof.

ART. 10. *Time for payment of insurance for loss of life.* Unless extended by the provisions hereinafter contained, payment of the insurance for loss of life shall be made within ninety days after the death of the insured is established in a manner satisfactory to the Administrator, but payment may be made prior to the expiration of such ninety days at the discretion of the Administrator. The time for payment may be extended without penalty or interest for that period of time consumed by the Administrator in establishing the identity or the location of the beneficiary or beneficiaries, and should any conflicting claims for payment be presented to the Administrator, payment of the insurance may be withheld and the time for payment thereof extended without any penalty or obligation to pay interest until such claims are duly adjudicated or otherwise withdrawn, settled or compromised to the satisfaction of the Administrator.

ART. 11. *Proof of death.* The time and facts of death of any insured shall be established in a manner satisfactory to the Administrator; and his determination of the time and facts of death shall be binding and conclusive against all persons for all purposes of this policy. If, however, payment of a part of the insurance for loss of life has been made and it appears that the insured is alive, payment of the balance of the insurance for loss of life shall not be made, but the payments of insurance in whole or in part theretofore made shall not be recovered, except where such payments were induced by wilful misrepresentation or fraud either by the beneficiary or any other person. The part so paid shall, however, be a discharge to the extent thereof of any other obligation under this policy, including the obligation to pay benefits under article 17 hereof, to the insured or any other person.

ART. 12. *Disability and dismemberment—A. Disability.* "Disability" as that term is used in this policy means incapacity because of injury proximately caused by the risks insured against herein which necessarily and continuously prevents the insured from performing any and every kind of duty pertaining to his occupation at the time of injury.

(1) If an insured suffers disability he shall be paid benefits at the rate of $150 a month, provided, however, that during any part of such period when the insured is hospitalized he shall be paid benefits at the rate of $100 a month, beginning with his return to the continental United States, excluding Alaska, until the Administrator determines that the disability has ceased or until a total of $5,000 is paid, whichever first occurs.

(2) If the Administrator determines at any time during the period such monthly benefits are payable that the insured has received maximum medical treatment for such disability and that such disability is, therefore, permanent in quality (loss of both hands, or both arms, or both feet, or both legs, or both eyes, or combination of any two thereof, will be conclusively presumed by the Administrator to constitute a disability permanent in quality), he shall notify the insured of such facts and the insured shall have the option of

(a) Continuing to receive such monthly benefits at the rate of $150 a month or $100 a month, as the case may be, until the aggregate of all the monthly benefits paid to him both before and after such determination total $5,000, or

(b) Receiving in a lump payment the sum of $5,000 less the total of the monthly benefits paid to him prior to such determination.

(3) In the event the insured elects after such determination to accept payments for such disability under subdivision (2)(a) hereof and if when the total of $5,000 has been paid him as therein provided, the insured claims in writing, and establishes to the satisfaction of the Administrator, that because of the same injury he is incapable of performing, for renumeration or profit, any work or engaging in any business or occupation, then he shall be paid further benefits at the rate of $150 a month or $100 a month, as the case may be, until the Administrator determines such incapacity has ceased or until a total of $2,500 is paid, whichever first occurs.

B. *Dismemberment, including loss of function.* If the Administrator determines that the insured, as a proximate result of the risks insured against herein, has suffered a dismemberment or loss of function of the type set forth below, not, however, amounting to disability which the Administrator determines to be permanent in quality, the Underwriter will pay to the insured additional benefits measured by the following percentages of the principal sum. Such benefits shall be in addition to the benefits paid under subdivision (1), paragraph A hereof, but the aggregate of such benefits for disability, dismemberment, and loss of function shall not exceed the principal sum.

(1)

Member lost	*Percent*
(a) Arm	65
(b) Leg	65
(c) Hand	50
(d) Foot	50
(e) Eye	45
(f) Thumb	15
(g) First finger	10
(h) Great toe	9
(i) Second finger	5
(j) Third finger	5
(k) Toe other than great toe	2½
(l) Fourth finger	2½

(m) Loss of hearing: For complete loss of hearing of one ear, 12½ percent: for the complete loss of hearing of both ears, 50 percent.

(n) Phalanges: For loss of more than one phalange of a digit, the same as the loss of the entire digit; for loss of the first phalange one-half the loss of the entire digit.

(o) Amputated arm or leg: For an arm or leg, if amputated at or above the elbow or the knee, the same as for the loss of the arm or leg; if amputated between the elbow and the wrist or the knee and the ankle, the same as for the loss of a hand or foot.

(p) Binocular vision or per centum of vision: For loss of binocular vision or for eighty percent or more of the vision of an eye shall be the same as for loss of the eye.

(q) Two or more digits: for loss or loss of use of two or more digits, or one or more phalanges of two or more digits, or a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby but shall not exceed the payment for loss of a hand or foot.

(r) Total loss of use: for permanent total loss of use of a member shall be the same as for loss of the member.

(s) Partial loss or loss of use: payment for permanent partial loss or loss of use of a member may be for proportionate loss of the member or loss of use of the member.

(t) Disfigurement: proper and equitable payment for serious facial or head disfigurement, not to exceed 50 percent.

(u) Total or partial loss or loss of use of more than one member or parts of members. In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in subdivision (a) to (t) both inclusive, hereof, but not amounting to permanent total disability, payment shall be made for the loss or loss of use of each such member or part thereof; however, not exceeding the principal sum, and except that where the injury affects only two or more digits of the same hand or foot, subdivision (q) hereof shall apply.

(2) The amount determined by the Administrator to be due the insured for dismemberment or loss of function shall

(a) If $750 or less, be paid the insured in a lump sum as soon as practicable.

(b) If more than $750, be paid, at the option of the insured, in a lump sum or in monthly installments of $150 or $100, as the case may be, beginning with the month next succeeding the last monthly payment made for disability pursuant to the provisions of subdivision (1), paragraph A hereof, or as soon thereafter as is practicable. The insured shall notify the Administrator in writing of the desired method of payment immediately upon receipt of the Administrator's determination that the insured is entitled to payment for dismemberment or loss of function under this paragraph. Should the Administrator not receive such written notice within thirty days, it shall be conclusively presumed that the insured desires payment in a lump sum and the Underwriter will act accordingly.

(3) If the insured elects under subdivision (2)(b) hereof to accept payment for dismemberment or loss of function in monthly installments, the number of installments due shall be increased in number by 10 percent but in no event shall the increase be less than one installment of $150 or $100, as the case may be.

C. *Injury increasing disability.* The Administrator in determining if disability, dismemberment or loss of function exists, or if found to exist, the quality thereof, will not take previous disabilities, dismemberments or losses of function into account. If, however, such previous condition was insured under this Second Seamen's War Risk Policy the insured shall receive with respect to the two claims an aggregate sum not less than he would have been entitled to under either subdivision (2) and (3) of paragraph A or paragraph B hereof, had the injuries causing both disabilities been received at the same time.

D. Disability shall not include incapacity directly resulting from bodily or mental infirmity or disease of any kind. Nor shall benefits be paid for dismemberment or loss of function directly resulting from bodily or mental infirmity or disease of any kind.

E. If the insured elects after a determination by the Administrator that he is entitled to benefits under either subdivision (2) paragraph A or paragraph B hereof to accept payments for such disability, dismemberment, or loss of function, as the case may be, in installments, and if the insured dies from a cause not insured against herein before he has received the last installment, the remainder which he would have received under such subdivision had he survived shall be paid to the person or persons who would have received his life insurance hereunder, subject, however, to all the conditions, stipulations, and provisions contained in this policy governing the disposition and payment of the insurance for loss of life.

The right of the insured to payment of the benefits provided for herein shall be conditioned upon his or her being alive to receive payment, and benefits shall not be paid to the heirs, executors, or administrators of the insured, or of any other person.

ART. 13. *Physical examination.* The underwriter shall have the right to require an examination of the person of the insured when and so often as it may reasonably require and also the right and opportunity in case of death to make an autopsy where it is not forbidden by law.

ART. 14. *Personal effects defined.* The term "personal effects" includes personal property reasonably necessary or required for use on board the vessel as well as those articles ordinarily or customarily carried on board for the personal use, wear, comfort, or convenience of the insured, either while on board, while in a foreign port, or upon his return to the home port. Articles of apparel, whether used for ornamentation or otherwise, and articles used in the performance of duties on board, are also included. Articles carried for the purpose of business foreign to the actual duties of the insured, or for resale, are excluded.

ART. 15. *Amount of payment for loss of, or damage to, personal effects.*

A. In the event of total loss of, or damage (equivalent to total loss) to the personal effects of any insured, reimbursement for such total loss or damage shall be as follows:

(a) Licensed officer, $500;

(b) Unlicensed crew member, $300;

(c) U.S. Merchant Marine cadet or cadet officer, $300.

If an insured shall establish the loss of a sextant which he carried aboard the vessel, he shall be paid $100 extra. If the insured shall establish the loss of binoculars, which he carried aboard the vessel, he shall be paid $50 extra. A total loss shall be determined without reference to apparel actually worn by the crew member at the time of the loss or damage.

B. In the event of a partial loss of or damage to the personal effects of an insured, he shall be reimbursed for the actual value of such effects lost or damaged to the extent of such loss or damage, but in no event shall the payment for such effects lost or damaged exceed the amount set forth in paragraph A of this article 15 for which total loss or damage is payable.

ART. 16. *Death of an insured prior to payment for loss of or damage to personal effects.* Payment for loss of or damage to personal effects shall be conditioned upon the insured being alive to receive payment, and shall not be payable to his heirs, executors, administrators or assigns, except as provided in article 6 hereof.

ART. 17. *Detention and repatriation benefits.* A. If it is established to the satisfaction of the Administrator, who, for this purpose, may rely on any official information furnished him by any department or agency of the United States Government, that the insured's vessel has been destroyed or abandoned as a result of a risk or peril insured against herein and that the insured has survived such an event and is not detained (in the sense that that term is used in paragraph B, article 17 hereof), monthly benefits shall be paid as hereinafter provided in this paragraph A. Such monthly benefits shall be equal to the monthly basic wage of the insured (including special emergency wage), as shown by the shipping articles signed by the insured or, if not on articles, by the contract of employment entered into by the insured. Such monthly benefits shall be paid from the date of such destruction or abandonment of the vessel, which, for the purposes hereof, shall be the date recognized by the Administrator when the obligation to pay wages under the applicable shipping articles or contract of employment terminated, or which is otherwise fixed by the Administrator as the date of such destruction or abandonment, and shall continue until the insured arrives at a continental port of the United States.

Such monthly benefits shall be paid to the person or persons, if living, to whom the insured's wages are allotted under the applicable shipping articles. Such allottee or allottees shall receive that portion of the monthly benefits which is equal in amount to the insured's monthly wage which has been allotted, provided such latter amount does not exceed the amount of the monthly benefits, and provided further that no payment shall be made to an allottee for any fractional allotment period between the last regular allotment date and date when such monthly benefits terminate. If no such allotment has been made, or if the person to whom the insured has allotted his wages is dead or dies, or if an allotment has been made and the allottee is living but the amount of monthly benefits exceeds the amount which can be paid to such allottee, the benefits or the remainder thereof shall be held by the Administrator for the benefit of the insured until his return to the continental United States, excluding Alaska, with the right to the Administrator, however, to pay such benefits or the remainder thereof in whole or in part to any person or persons named in subdivision (3), paragraph A, article 7 of these stipulations and conditions (for the purpose of this paragraph the words "widow" and "widower" as used in subdivision (3) shall mean "wife" and "husband" respectively), including the allottee or allottees aforementioned, and such payment when made shall be conclusively presumed to have been made for the account of the insured.

B. If it is established to the satisfaction of the Administrator, who, for this purpose may rely on any official information furnished him by any department or agency of the United States Government, that the insured is detained, either by capture by an enemy of the United States or by internment, but not otherwise, monthly benefits shall be in the same amount or amounts and shall be held or paid in the same manner and for or to the same person or persons as set forth in paragraph A, article 17 hereof. Such monthly benefits shall be paid during such period of detention beginning with the date that the insured suffered such detention as determined by the Administrator.

C. If, in the opinion of the Administrator, it is uncertain—

(1) Whether the insured survived or died as a proximate result of the occurrence of a risk or peril insured against, or

(2) Whether the insured survived or died as a proximate result of the occurrence of an event which may be a risk or peril insured against, but as to which, in the opinion of the Administrator, there is also uncertainty, or

(3) Whether the insured's vessel has been destroyed or abandoned as a proximate result or a risk or peril insured against, although it is certain, in the opinion of the Administrator, that the insured is alive, or

(4) Whether the insured is detained (in the sense that that term is used in paragraph B, article 17 hereof), although it is certain, in the opinion of the Administrator, that the insured is alive,

monthly benefits shall be paid as hereinafter provided in this paragraph C. Such monthly benefits shall be in the same amount or amounts and shall be held or paid in the same manner and for or to the same person or persons as set forth in paragraph A, article 17 hereof. Such monthly benefits shall be paid from the date, as fixed by the Administrator, the insured, if alive, was probably separated from his vessel under any of the respective situations set forth above and shall continue until—

(a) The Administrator determines that the insured is entitled to benefits as provided in which event monthly benefits shall thereafter be paid as provided in paragraph A, article 17 hereof, or

(b) The Administrator determines that the insured is entitled to benefits as provided under paragraph B, article 17 hereof, in which event monthly benefits shall thereafter be paid as provided in paragraph B, article 17 hereof, or

(c) The death of the insured is established in a manner satisfactory to the Administrator, or

(d) The issuance by the Administrator of certificate of presumptive death of the insured, whichever first occurs, in which event benefits shall cease: *Provided, however*, That if the Administrator determines that at any time after such benefits have ceased the insured is entitled to benefits or has been entitled to benefits as provided in either paragraph A or paragraph B, article 17 hereof, monthly benefits shall thereafter be paid as provided in paragraph A or paragraph B, article 17 hereof, as the case may be, with proper adjustment for the period that the insured was entitled to be paid such benefits prior to the Administrator's determination thereof.

D. If, while the insured is being paid benefits under either paragraph A or B or C, article 17 hereof, the Administrator determines that the insured was not, or is no longer, entitled to benefits under the provisions of such paragraph, then the payment of such benefits shall cease: *Provided*, That if the Administrator determines the insured is entitled to benefits under the provisions of any other of such paragraphs, the insured shall thereafter be entitled to benefits under the provisions of such paragraph.

E. In no event shall benefits be paid under paragraphs A, B, C, or D, article 17 hereof beyond three months after the termination of the national emergency shall have been proclaimed by the President or beyond the time that the insured shall either refuse without good cause to return to the continental United States, excluding Alaska, or accept employment on another vessel for a purpose other than to be repatriated.

F. If the insured, upon his return to the United States (excluding Alaska), shall be entitled to receive under paragraph A or B or C, article 17 hereof, benefits exceeding a sum equal to twelve months' basic wage (including special emergency wage), payment of a sum equal to twelve months' basic wage (including special emergency wage) shall be made to the insured forthwith. Any unpaid balance of such benefits shall be paid to the insured in monthly installments equivalent in amount to such monthly benefits until paid in full. In determining the amount which the insured is entitled to receive in a lump sum, as aforesaid, benefits paid to his allottees or to the persons named in subdivision (3), paragraph A, article 7 hereof, shall not be considered. Payments to an allottee or to schedule beneficiaries shall not be made after the date of arrival of the insured at a continental United States port, and all payments thereafter shall be made only to the insured: *Provided, however*, That if the insured dies after his arrival and while he is receiving monthly payments as above set forth, such monthly payments shall thereafter be paid to his allottees or to schedule beneficiaries until paid in full.

G. The right of the insured to be paid benefits or to have benefits paid on his account, under paragraphs A, B, or C, article 17 hereof, shall be conditioned upon the insured being alive during the period such benefits accrued or were paid: *Provided, however,* That benefits payable for the account of the insured to allottees or schedule beneficiaries shall always be paid in full to the date of establishment of death or presumed death of the insured as determined under paragraph C, article 17 hereof. Such benefits under no circumstances shall be paid or considered payable to heirs, executors or administrators of the insured or of any allottee or schedule beneficiary of the insured.

H. The Underwriter agrees that detention and repatriation benefits, as provided under this article 17, shall continue until the insured shall be returned to the port to which the Operator is obligated to return the insured, as shown by the shipping articles signed by the insured or, if not on articles, by the contract of employment entered into by the insured.

ART. 18. *Payment constituting a discharge.* A payment by the Administrator to the person or persons determined by him to be entitled to all or any of the proceeds of this policy shall constitute a pro tanto discharge of the obligations under this policy of the United States of America, the Department of Transportation, and the Maritime Administrator.

ART. 19. *Nonassignability.* Neither this policy nor any part thereof nor any insurance, benefits or allowances payable hereunder shall be assignable.

ART. 20. *Amount permitted to be paid agents or attorneys.* Except in the event of legal proceedings arising under or in connection with this policy, payment to any attorney, agent or any other person acting for or on behalf of an insured, beneficiary or recipient, by such insured or any beneficiary or recipient, for such assistance as may be required in the preparation of the claim, shall not exceed $25 in any one case, except that the Administrator may approve an additional amount in those cases in which he feels the nature of the services rendered warrant it. At any time during the pendency of any litigation arising under or in connection with this policy or whenever a judgment or a decree shall be rendered in an action or proceeding arising under or in connection with this policy for the payment of any insurance, benefits or allowances under this policy, the court in which such action or proceeding is pending or in which a judgment or decree has been rendered may and is requested to allow such fees for the attorney or attorneys of the person or persons who are parties to such action or proceeding or who have obtained a judgment or a decree, as it may determine to be just compensation for the services rendered. Before the payment of any insurance, benefits or allowances hereunder, or any judgment or decree, as aforesaid, the Administrator may require proof to be submitted to him in the form of an affidavit, or in any other manner which to him seems fit, by the insured, the beneficiary, the recipient, or holder of any judgment or decree, or his attorney, agent, or any other person acting for or on their behalf, or any or all of them, that the payment previously or thereafter to be made to such attorney, agent or other person does not exceed the sum herein specified or allowed by the court, as the case may be.

ART. 21. *Notice of loss and claim.* Notice of disability (including dismemberment and loss of function), and claim for payment therefor under this policy shall be given to the Administrator within ninety days after the happening of the event causing the disability (including dismemberment and loss of function), or ninety days after the insured returns to the continental United States, excluding Alaska. Notice of loss of, or damage to, personal effects and claim for payment therefor under this policy shall be given to the Administrator within ninety days after the happening of the event causing the loss, or ninety days after the insured returns to the continental United States, excluding Alaska.

Any insured who is employed on a vessel as an employee of the United States through the Office of National Shipping Authority, Maritime Administration, or successor Office shall comply with applicable rules and regulations pertaining to the filing of claims and administrative allowance or disallowance as prescribed by NSA Order No. 67 (LPR 1), 20 FR 2414, or as amended or revised.

ART. 22. *Limitation of suit.* No action or suit upon this policy shall be valid unless commenced within two years from the time the insurance, benefits or allowances conferred by this policy are payable, except that:

(a) An action or suit by the insured may be commenced at any time within two years after he returns to the United States or the termination of the national emergency shall have been proclaimed by the President, whichever first occurs, and

(b) The time during which a person, other than the insured, is in enemy occupied territory shall be excluded from the two year period as aforesaid.

Any insured who is employed on a vessel as an employee of the United States through the Office of National Shipping

Authority, Maritime Administration, or successor Office shall comply with applicable rules and regulations pertaining to the filing of claims and administrative allowance or disallowance as prescribed by NSA Order No. 67 (LPR 1), 20 FR 2414, or as amended or revised.

Art. 23. *Deviation and change of voyage.* This insurance shall not be affected by a deviation or change of voyage of the vessel, except that the Administrator may require the payment of an additional premium.

Art. 24. *"Administrator" defined.* Wherever the term "Administrator" is used in this policy that term shall include the person who is the Maritime Administrator at the time of the issuance of this policy and his successor or successors in office, and such other person or persons employed by the Administrator, the Maritime Administration, the Department of Transportation or the United States of America, to whom the Administrator may delegate duties or powers for the administration of the insurance. Wherever there is mention in this policy of a decision, determination or exercise of discretion by the Administrator, such terms shall include a decision, determination or exercise of discretion of a person or persons to whom the Administrator may delegate such power or powers and shall not be taken to mean that the personal act of the Administrator is required.

Art. 25. *Multiple claims against the United States.* A. It is the intent of the underwriter in the issuance of this policy to avoid providing or paying any benefits or sum of money for any loss, event or occurrence to the extent that legal liability to pay for the same loss, event or occurrence otherwise exists on the part of the United States of America, the Department of Transportation, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel, and this policy shall be construed to give effect to such intent. By the acceptance of the insurance protection afforded by this policy, by the designation of any beneficiary thereunder or by otherwise acting pursuant to the terms of this policy, the insured, in behalf of himself, his personal and legal representatives, administrators, executors, heirs at law, next of kin, dependents and beneficiaries, acknowledges such intent and agrees to the conditions and provisions of this policy, including specifically those contained in this Article 25. Similarly, any beneficiary or person to whom any benefit or sum of money is paid under the provisions of this policy does, by making claim therefor or by the acceptance thereof, acknowledge such intent and agrees to the conditions and provisions of this policy, including specifically the conditions and provisions of this Article 25.

B. If any final judgment or award is obtained by any person against the United States of America, the Department of Transportation, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel by reason of the loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, or detention (including the occurrence of other situations hereinbefore provided) of the insured but based on a claim or cause of action other than one under this policy, and if such respective loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects or detention (including the occurrence of other situations hereinbefore provided) of such insured, either separately or combined also constitutes or forms the basis of a claim payable under this policy, the amount which otherwise would have been payable hereunder because of such claim shall be reduced by an amount equal to the amount of such final judgment or award, unless such person, in a form and manner satisfactory to the Administrator, effectively and validly releases or discharges the United States of America, the Department of Transportation, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the Administrator, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel from their respective obligations under such final judgment or award to the extent of the amount of such claim payable under this policy.

C. The payment and acceptance of any benefit or sum of money under this Policy shall constitute a waiver, release, acceptance, discharge and satisfaction, to the extent of such payment, of any and all claims, causes of actions, judgments or awards against the United States of America, the Department of Transportation, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel other than under this policy by arising out of the respective loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, or detention (including the occurrence of other situations hereinbefore provided) for which such benefit or sum of money was paid and accepted under this policy.

D. This Article 25 shall not apply to claims for wages, maintenance and cure where the right to such items arises under the general maritime law of the United States and not under this policy, but this Article 25 shall apply to claims for wages to the extent that the insured, his allottee or any other person who is entitled to receive or has received benefits or sums of money under Article 17 hereof, and to claims for maintenance to the extent and for the period that the insured is entitled to receive or has received benefits or sums of money under paragraph A of Article 12 hereof.

ART. 26. *Amendments and modifications.* If the Administrator determines that the Second Seamen's War Risk Policy (1955) should be amended and modified to provide for increased hazards and risks undertaken by the masters, officers and crews of vessels of the American Merchant Marine arising from important changes or developments in emergency conditions, or if the Administrator determines that the Second Seamen's War Risk Policy (1955) should be amended and modified to correct injustices or cases of hardship arising under and by virtue of its present terms, the Administrator reserves the right to amend or modify the Second Seamen's War Risk Policy (1955), including this particular policy, in such manner and in such respects as prescribed by him. If the Administrator further determines that it is necessary and proper to make such amendments or modifications retroactive in effect in order to avoid serious inequalities, he reserves the right to make any such amendment or modification applicable to any and all cases or claims arising under the Second Seamen's War Risk Policy (1955), including this particular policy, irrespective of whether benefits have or have not been claimed or paid thereunder, in such manner and in such respects as prescribed by him.

ART. 27. *Payment of premium and cancellation.* A. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Operator within fifteen days after receipt by the Operator of notice of the revised rate, this policy shall become null and void and of no effect as of midnight, e.s.t., of the day ending such fifteen-day period, unless the Operator, within such period, dispatches notice to the Maritime Administrator, by telegraph, of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the receipt by the Maritime Administrator of such notice of nonacceptance, the insurance provided hereunder shall terminate.

B. In the event any premium, either original or additional, which becomes due and payable under this policy, is not paid within thirty days after receipt by the Operator of notice of the amount thereof, this insurance shall become null and void and of no effect as of the commencement of the period for which the premium charge is made, unless the Maritime Administrator agrees otherwise.

C. If the vessel shall be requisitioned by the United States on a basis whereby the United States provides insurance equivalent to that provided hereby, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

ART. 28. *Extension.* Should the vessel be at sea at the natural expiry of this Policy, this insurance shall be extended until midnight, Greenwich Mean Time, of the day on which the vessel is moored at the next port to which she proceeds, provided, notice be given to the Underwriter as soon as practicable and an additional premium paid, if required.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this instrument, but acts solely under the power conveyed to the underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned this —— day of ——— 19—.

(Authorized underwriting agent)

By ————————————

(b) *Increased Benefits Endorsement.* The following is the standard form of Increased Benefits Endorsement which prescribes the areas in which increased benefits are presently applicable. The areas covered by this endorsement are subject to change.

Form MA-242(A) (10-59)

United States of America

Department of Transportation

Maritime Administration

INCREASED BENEFITS ENDORSEMENT

This endorsement is attached to and made a part of Second Seamen's War Risk Policy (1955) No. SSWR —— issued to ———.

It is hereby understood and agreed that while a vessel covered by this policy is in the following described areas:

Area I. All waters within and bounded by the following lines: beginning at a point on the China Coast at latitude 23° north, thence east to the intersection with longitude 119° east, thence northeasterly to the intersection of a point at latitude 26°15′ north and longitude 121° east and thence west along the 26°15′ parallel of north latitude to the China Coast;

Area II. All waters within and bounded by the following lines: beginning at a point on the China Coast at 33° north latitude, thence east to the intersection with longitude 124° east, thence north along 124° east meridian to the China Coast;

Area III. All waters within and bounded by the following lines: beginning at a point on the China Coast at 26°15′ north latitude, thence east to the intersection with 121° east longitude, thence northeasterly to a point at the intersection of 30° north latitude and 124° east longitude, thence north to the intersection of 33° north latitude and 124° east longitude and thence west along the 33° parallel of north latitude to the China Coast;

Area IV. All waters within and bounded by the following lines: beginning at a point on the China Coast and 23° north latitude, thence east to 119° east longitude, then northeasterly to 30° north latitude and 124° east longitude, and then south to 25° north latitude and 122°14′ east longitude, and then to 24°25′ north latitude and 122°04′ east longitude, and then to 23°03′ north latitude and 121°36.5′ east longitude, and then to 22°40′ north latitude and 121°20.5′ east longitude, and then to 21°49′ north latitude and 121°02′ east longitude, and then to Shichisei Seki Rocks (21°46′ north latitude and 120°49′ east longitude), and then west northwest intersecting at the China Coast at 23° north latitude,

The benefits provided thereunder as respects loss of life, disability, dismemberment and loss of functions are increased by 100 percent and with respect to benefits for personal effects of unlicensed personnel from $300 to $500.

Upon knowledge by the insured of a vessel being in such areas, the insured shall, as soon as permissible under Government laws and regulations, furnish the Maritime Administrator with the name of such vessel and the dates of its entry into and departure from such areas.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

This endorsement becomes effective with the inception of the policy to which it is attached.

Not valid unless countersigned by a duly authorized agent of the Department.

United States of America,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

____
(Maritime Administrator)

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned this —— day of —— 19—.

____
(Authorized underwriting agent)

By ______________________

Subpart E—War Risk Builder's Risk Insurance

§ 308.400 Authority.

The Secretary of Transportation delegated authority to the Maritime Administrator to perform the functions vested in the Secretary of Transportation by Title XII of the Merchant Marine Act, 1936, as amended. The Maritime Administrator, pursuant to a finding by the Secretary under section 1202(a) of the Act authorized, effective March 4, 1953, the issuance of war risk insurance on American vessels under construction in shipyards in the United States.

§ 308.401 Eligibility of a vessel for insurance.

A vessel is eligible for insurance if it is an American vessel as defined in section 1201(a), Title XII of Merchant

Marine Act, 1936, as amended, being constructed in a shipyard within the United States.

§ 308.402 Periods during which a vessel under construction may be insured.

(a) *Prelaunching period.* This period is from the date and time the first material destined for inclusion as part of the vessel becomes at risk at the shipyard of the builder to the date and time the vessel first becomes water-borne after launching.

(b) *Postlaunching period.* This period is from the date and time the vessel first becomes water-borne after launching to the date and time of delivery of the vessel by the builder.

(c) *Portions of periods.* A vessel may be insured for a portion of either period as cited in paragraph (a) or (b) of this section at the sole discretion of the Maritime Administrator.

§ 308.403 Amounts for which a vessel will be insured.

(a) *Prelaunching period.* The amount insured during this period will be the cost of material destined for inclusion as a part of the vessel at risk at the shipyard of the builder, plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 percent, all as determined from the builder's records.

(b) *Postlaunching period.* The amount insured during this period will be: (1) An amount not in excess of the difference in amount between the total amount of war risk insurance obtainable from companies authorized to do an insurance business in a State of the United States and the contract price of the vessel plus the cost of the materials and equipment furnished by the owner and not included in such contract price, or (2) an amount not in excess of the contract price of the vessel plus the cost of materials and equipment furnished by the owner and not included in the contract price: *Provided,* That no war risk insurance is obtainable from companies authorized to do an insurance business in a State of the United States.

(c) *Maximum liability.* The amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the amount insured: *Provided,* That the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress: *Provided, further,* That where the Maritime Administration is an Excess Underwriter, the amount payable under this insurance for damage to or the total or constructive total loss of the vessel, after all sums due and payable under primary and excess insurances written by commercial Underwriters have been exhausted, shall be the balance, if any, of said claims: *And provided further,* That in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

§ 308.404 Application for insurance.

Application for insurance shall be made to the Maritime Administration, Attention: Director, Office of Trade Analysis and Insurance, Washington, DC 20590. The applications shall be signed by all parties to be named as assureds, unless they have filed with the Director, Office of Trade Analysis and Insurance, written designations of a broker or brokers to act for them, in which case the applications may be signed by such broker or brokers.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 33 FR 2944, Feb. 14, 1968; 53 FR 8189, Mar. 14, 1988]

§ 308.405 Form of application.

Applications submitted shall be in duplicate and in accordance with the following form. Separate applications shall be submitted for each of the coverages, paragraphs (a) and (b) (1) and (2) referred to in § 308.403.

Form MA-282 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

APPLICATION FOR WAR RISK BUILDER'S RISK INSURANCE

Application is made for War Risk Builder's Risk Insurance pursuant to Title XII of Merchant Marine Act, 1936, as amended, and in accordance with all provisions of law and subject to all limitations thereof:

Assured to be ______________________________

____

____

Loss, if any, payable to ______________________

____

____

____

or order.

On hull, tackle, apparel, ordnance, munitions, engines, boilers, machinery, appurtenances (including plans, patterns, moulds, etc.), boats and other equipment, furniture and fixtures and all material, including staging, scaffolding and similar temporary construction, belonging and destined for

____

____

building at the yard of the builder at

____

Indicate whether application is for coverage (a), (b)(1), or (b)(2).

Coverage____________________________________

Coverage (a). Prelaunching Period

Amount to be insured: The valuation at risk at the shipyard of the builder during the currency of the insurance for which application is made, which shall be the cost of materials, plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 per cent, all as determined from the builder's records and reported monthly. To attach as of the date and time the first material destined for inclusion as a part of the vessel becomes at risk at the shipyard of the builder and to expire as of the date and time the vessel first becomes waterborne after launching. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

Coverage (b)(1). Postlaunching Period, Excess

Amount to be insured $——— on an excess of loss basis, being the excess of $——— primary and excess war risk insurances, which it is represented is the maximum amount of war risk insurance obtainable from companies authorized to do an insurance business in a State of the United States.

The vessel is to be valued at $———, being the contract price of $——— plus $——— for materials and equipment furnished by the owner and not included in the contract price, it being understood that if no amount has been stated for such materials and equipment same will not be insured. To attach as of the date and time the vessel first becomes water-borne after launching and to expire as of the date and time of delivery of the vessel by the builder. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

Coverage (b)(2). Postlaunching Period, Primary

Amount to be insured $———, it being represented that no war risk insurance is obtainable from companies authorized to do an insurance business in a State of the United States.

The vessel is to be valued at $———, being the contract price of $——— plus $——— for materials and equipment furnished by the owner and not included in the contract price, it being understood that if no amount has been stated for such materials and equipment same will not be insured. To attach as of the date and time the vessel first becomes water-borne after launching and to expire as of date and time of delivery of the vessel by the builder. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

It is further understood that the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the amount insured: *Provided*, That the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress: *Provided further*, That where the Maritime Administration is an Excess Underwriter, the amount payable under this insurance for damage to or the total or constructive total loss of the vessel after all sums due and payable under primary and excess insurances written by commercial Underwriters have been exhausted shall be the balance, if any, of said claim: *And provided further*, That in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with section 802 Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

Terms and conditions: Subject to form of policy prescribed by the Maritime Administrator, acting for the Secretary of Transportation.

Rate of premium to be fixed by the Maritime Administrator, acting for the Secretary of Transportation.

Dated ——— 19—.

Applicant(s)———————————— ——————

By————————————

(Authorized signature)

————————————

By————————————

(Authorized signature)

————————————

By————————————

(Authorized signature)

Policy and premium invoices to be sent to:

Name ————————————

Address ————————————

————————————

§ 308.406 Issuance of policies; their terms and conditions.

Upon acceptance of an application, a policy in the form set forth in § 308.409 will be issued with endorsements MA-283(A) and MA-283(D), or MA-283(B) and MA-283(D), or MA-283(C) and MA-283(D), as appropriate, attached.

§ 308.407 Premiums and the payment thereof.

For the prelaunching period premium will be charged on the average value at risk during each calendar month or the daily pro rata part thereof for periods of less than one calendar month. For the postlaunching period premium will be charged on the amount insured for the full period. Premiums shall be due and payable within thirty days after receipt by the Assured of notice of the amount thereof and if not paid within that period the insurance shall become null and void and of no effect from the beginning of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise. Payment shall be made to the Maritime Administration, Department of Transportation, Washington, DC 20590, by check payable to the order of "Maritime Adm.—Transportation."

§ 308.408 Right of Maritime Administrator to change rate of premium.

The Maritime Administrator, acting for the Secretary of Transportation, shall have the right to change the rate of premium at any time, and unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, the policy shall become null and void and of no effect as of midnight, Standard Time, at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which the insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administration by telegraph of his refusal to accept such revised rate of premium, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance the insurance shall ipso facto terminate.

§ 308.409 Standard form of War Risk Builder's Risk Insurance Policy.

The following is the standard form of War Risk Builder's Risk Insurance policy.

Form MA-283 (Revised 5-61)

Policy No. WRBR ——

UNITED STATES OF AMERICA

Represented by the Maritime Administrator, acting for the Secretary of Transportation (sometimes hereinafter called the Underwriter), by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof does make insurance and cause to be insured

————————————

————————————

————————————

for account of themselves.

Loss, if any (excepting claims required to be paid to others under the Collision Clause), payable in funds current in the United States to

————————————

————————————

————————————

or order.

Sum insured hereunder

dollars, from the ——— day of ————, 19—, ———— time to the ——— day of —————, 19—, ———— time (hereinafter referred to as "expiration date") or until delivery if delivered at an earlier date.

On hull, tackle, apparel, ordnance, munitions, engines, boilers, machinery, appurtenances (including plans, patterns, moulds, etc.), boats and other equipment, furniture and fixtures and all material, including staging, scaffolding and similar temporary construction, belonging to and destined for

————————————————————

————————————————————

building at the yard of the builder at————

————————————————————

as per clauses hereinafter set forth.

The Underwriter to be paid in consideration of this insurance ———— dollars, being at the rate of ——— percent.

In the event of such delivery not being effected by the aforesaid expiration date, this Policy shall be extended at additional premium to be fixed by the Maritime Administrator provided previous notice be given to the Underwriter as soon as practicable. However, in no case shall this Policy extend beyond delivery of the vessel.

It is agreed that any changes of interest in the vessel hereby insured shall terminate the insurance provided by this Policy, unless the Maritime Administrator otherwise agrees.

In consideration of an additional premium of $——— being at the rate of ——— percent, this Policy is extended to cover delivery trip from the port of construction to ————. It is a condition of this extension that the vessel (and tug and towing arrangements, if any) shall be approved, if practicable, prior to sailing by a surveyor appointed by the Underwriter, or held covered at a premium to be agreed.

The said vessel, etc. including all materials and appliances therefor, for so much as concerns the Assured and the Underwriter, is and shall be valued at $——— (being the contract price of $———— and $———for materials and equipment furnished by the Owner and not included in the contract price), which shall be deemed the insured value of the vessel for the purposes of this insurance. If no amount is stated for materials and equipment furnished by the Owner, the Underwriter shall have no liability for loss or damage thereto.

In the event of a claim payable under this policy, the Underwriter shall not be liable for a greater proportion thereof than the amount of this insurance bears to the insured value.

This Policy insures against all risks of physical loss of or damage to the subject matter hereby insured, except as hereinafter provided.

In the event that faulty design of any part or parts should cause loss of or damage to the subject matter insured, this insurance shall not cover the cost or expense of repairing, replacing or renewing such part or parts, nor any expenditure incurred by reason of betterment or alteration in design.

In case of failure of launch, the Underwriters shall bear, up to the sum insured hereunder, their proportion of all subsequent expenses incurred in completing launch.

This Policy insures only, during the period aforesaid, while the subject matter hereby insured is at (ashore or afloat) the building location hereinbefore named; while in transit within the port of construction to and from such location; while on trial trips (including proceeding to and returning from the trial course) loaded or otherwise, as often as required, within a distance by water of 100 nautical miles of the port of construction or held covered as hereinafter provided.

Held covered at an additional premium, if any, to be named by the Underwriter in the event of deviation or change of voyage, provided notice be given the Underwriter as soon as practicable.

In case of any loss or misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the subject matter hereby insured, or any part thereof, without prejudice to this insurance, to the charges whereof the Underwriters will contribute their proportion as provided below. And it is expressly declared and agreed that no action of the Underwriters or Assured in recovering, saving or preserving the property hereby insured shall be considered as a waiver or acceptance of abandonment.

In the event of accident whereby loss or damage may result in a claim under this Policy, prompt notice shall be given in writing to the Underwriter in order that it may appoint its own surveyor, if it so desires.

There shall be no recovery for a Constructive Total Loss under this Policy unless the expense of recovering and restoring the vessel (as insured hereunder) to the state of its construction at time of loss, on the ways, while being launched or after launching, would exceed her value at such stage of construction (which value shall be taken to be the cost of labor actually expended in the construction of the vessel and material actually incorporated therein at the time of the loss, including accrued overhead and profit on such labor and material, not exceeding the insured value); but no claim for a Total or Constructive Total Loss hereunder shall exceed this Policy's proportion of the value so computed. This Policy shall also pay its proportion of any damage to material insured hereunder and not yet installed in the vessel and its proportion of any salvage and special charges and sue and labor expenses.

If claim for Total Loss or Constructive Total Loss is admitted or established under this Policy and sue and labor expenses have been reasonably incurred in excess of any proceeds realized or value recovered, the amount payable under this Policy will be the proportion of such excess that the sum insured hereunder (without deduction for loss or damage) bears to the insured value or the sound value of the vessel at the time of the accident, whichever was greater.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent Total or Constructive Total Loss sustained during the period covered by this Policy, or any extension thereof.

Average payable irrespective of percentage, and without deduction of one-third, whether the Average be particular or general.

This Policy also covers its proportion of General Average, Salvage and Special Charges applicable to the subject matter hereby insured payable as provided in the contract of affreightment, or failing such provision, or if there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York and/or per York/Antwerp Rules 1950. Provided always that when an adjustment according to the Laws and Usages of the port of destination is properly demanded by the owners of the cargo. General Average shall be paid in accordance with same.

And it is further agreed that in the event of salvage, towage or other assistance being rendered to the vessel hereby insured by any vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership or control of the vessel) shall be ascertained by arbitration in the manner provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

When the contributory value of the vessel is greater than the insured value herein the liability of the Underwriter for General Average contribution (except in respect to amount made good to the vessel) or Salvage shall not exceed that proportion of the total contribution due from the vessel that the sum insured hereunder bears to the contributory value; and if because of damage for which the Underwriter is liable as Particular Average the value of the vessel has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the sum insured hereunder and the Underwriter shall be liable only for the proportion which such net amount bears to the contributory value.

In the event of expenditure under the Sue and Labor Clause, this Policy shall pay the proportion of such expenses that the amount insured hereunder bears to the insured value of the vessel, or that the sum insured hereunder, less loss and/or damage payable under this Policy, bears to the actual value of the salved property; whichever proportion shall be less.

COLLISION CLAUSE

And it is further agreed that if the vessel hereby insured shall come into collision with any other ship or vessel and the Assured or the Charterers or the Surety in consequence of the insured vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriter will pay the Assured, or the Charterers or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as its subscription hereto bears to the insured value of the vessel hereby insured, provided always that its liability in respect to any one such collision shall not exceed its proportionate part of the insured value of the vessel hereby insured. And in cases where the liability of the vessel has been contested or proceedings have been taken to limit liability, with the consent in writing of a majority (in amount) of Hull Underwriters, it will also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both vessels are to blame, then, unless the liability of the Owners or Charterers of one or both such vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of Cross-Liabilities as if the Owners or Charterers of each vessel had been compelled to pay to the Owners or Charterers of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both vessels are the property, in whole or in part, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both vessels, and one to be appointed by the majority (in amount) of Hull Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured, or the Charterers, or the Surety may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, structures, or any other objects (excepting other vessels and property thereon), consequent on such collision, or in respect of the cargo, baggage or engagements of the insured vessel, or for loss of life, or personal injury. And provided also that in the event of any claim under this clause being made by anyone other than the Owners of the vessel hereby insured, he shall not be entitled to recover in respect of any liability to which the Owners of the vessel as such would not be subject, nor to a greater extent than the Owners would be entitled in such event to recover.

PROTECTION AND INDEMNITY CLAUSES

It is further agreed that if the Assured or the Surety for the Assured in consequence of its undertaking shall by reason of his interest in the insured vessel become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages and/or expenses arising from or occasioned by any of the following matters or things during the currency of this Policy, that is to say—

Loss of or damage to any other vessel or goods, merchandise, freight, or other things or interests whatsoever, on board such other vessel, caused proximately or otherwise by the vessel insured insofar as the same is not covered by the Collision Clause in this Policy; but the foregoing is not intended and shall not be construed to cover liability in excess of the amount recoverable under the Collision Clause;

Loss of or damage to any goods, merchandise, freight or other things or interest whatsoever, other than aforesaid (not being builders' gear or material or cargo on the insured vessel), whether on board the insured vessel or not, which may arise from any cause whatsoever;

Loss of or damage to any harbor, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraphic cable or other fixed or moveable thing whatsoever, or to any goods or property in or on the same, howsoever caused;

Loss of life of, or personal injury to, or illness of any person, or payments made on account of salvage whether of life or property, excluding, however, unless otherwise agreed by endorsement hereon, liability to an employee (other than a seaman) of an Assured, or in case of death to his beneficiaries or any others, under any Compensation Act;

Any attempted or actual raising, removal or destruction of the wreck of the insured vessel or the cargo thereof or any neglect or failure to raise, remove or destroy the same; however, for the purpose of this paragraph only, the Assured shall be deemed liable for expenses, after deducting any proceeds of the salvage, actually incurred by the Assured in removing the wreck of the insured vessel from any place owned, leased or occupied by the Assured:

Any sum or sums for which the Assured may become liable or incur from causes not hereinbefore specified, but which are recoverable under the printed forms of Protection and Indemnity policy commonly issued by stock insurance companies in the United States:

the Underwriter will pay the Assured such proportion of such sum or sums so paid, or which may be required to indemnify the Assured for such loss, as its subscription bears to the insured value of the vessel hereby insured, except that the total amount recoverable from the Underwriter for loss of life, personal injury or illness of employees (including seamen) of the Assured in respect to any one accident or series of accidents arising out of the same event shall not exceed that proportion of $200 per gross ton of the insured vessel which the amount insured under this Policy bears to the insured value of the said vessel. Where the liability of the Assured has been contested with the consent in writing of a majority (in amount) of the Underwriters on the vessel hereby insured, the Underwriter will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay;

Provided, however, That in case of vessels under construction, the insurance hereby afforded against loss of life, personal injury or illness as aforesaid, shall attach only from the moment the vessel hereby insured becomes water-borne, and shall terminate at the same time as the other insurances afforded by this Policy;

And provided further, That the total liability of the Underwriter under all sections of these "Protection and Indemnity Clauses" in respect of any one accident or series of accidents arising out of the same event is limited to the amount insured under this Policy, plus costs as hereinabove provided.

Notwithstanding anything to the contrary contained in these Protection and Indemnity Clauses, the Underwriter shall not be liable for or in respect of any loss, damage, liability or expense excluded by the F.C. & S. Warranties hereinafter set forth; or sustained or caused by mines or torpedoes, whether of enemy or friendly origin; or sustained in consequence of placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; and any such loss, damage and expense shall be excluded from this Policy without regard to whether the Assured's liability in respect thereof is based on negligence or otherwise, and whether in time of peace or war.

F.C. & S. Warranties and Other Exclusions

Notwithstanding anything to the contrary contained in any part of this Policy, this insurance is warranted free from any claim for loss, damage, liability or expense arising directly or indirectly from:

(A) Capture, seizure, arrest, restraint, or detainment, or the consequences thereof or of any attempt thereat, or any taking of the vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision or contact with aircraft, rockets, or similar missiles, or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned, or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or piracy;

(B) Loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions;

(C) Any consequential damages or loss through delay, however caused, except to the extent, if any, covered by the Collision Clause or the Protection and Indemnity Clauses of this Policy;

(D) The firing or testing of any weapon of war from, by or on the vessel. This exclusion is in addition to and is not to be considered in whole or in part as a substitution for or modification of the F.C. & S. Warranties hereinbefore set forth;

(E) Damage to docks, shipways, tools or any other property of the shipyard not intended to be incorporated in the vessel, except as hereinbefore covered;

(F) Any nuclear incident, reaction, radiation or any radioactive contamination whether controlled or uncontrolled, and whether the loss, damage, liability or expense be proximately or remotely caused thereby, or be in whole or in part caused by, contributed to, or aggravated by the risks and liabilities insured under this Policy, and whether based on the Assured's negligence or otherwise.

This Policy shall not be vitiated by any unintentional error in description of interest of voyage, provided the same be communicated to the Underwriter as soon as known to the Assured, and an additional premium paid if required.

The words "Owner" and "Assured" as used in this Policy shall be interpreted to mean either "Builder" or "Owner" or both, but shall in no event be construed to mean subcontractors.

If war risks are hereafter insured by endorsement on this Policy, such endorsement shall supersede the F.C. & S. Warranties hereinbefore set forth only to the extent that their terms are inconsistent and only while such war risks endorsement remains in force.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this Policy, but it shall not be valid unless countersigned by or on behalf of the Chief, Division of Insurance, Maritime Administration.

Countersigned at Washington, D.C., this —— day of ——— 19—.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

____
(Maritime Administrator)

By ______________________________
(Chief, Division of Insurance)

Form MA-283(A) (Revised 5-61)

CLAUSES FOR BUILDER'S RISK

(Prelaunching Period)

Endorsement attached to and made a part of Policy WRBR —— issued to ———.

The terms and conditions as set forth below shall supersede and nullify the clauses of the Policy in so far as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder shall be the valuation at risk at the shipyard of the Builder during the currency of this insurance, which shall be the cost of materials plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 percent, all as determined from the Builder's records but the amount of any claim for

damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the amount insured: *Provided*, That the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress: *And provided further*, That in no event shall the amount of such liability to an insured Owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. The Assured agrees to report to the Underwriter 100 percent of the valuation at risk and to pay premium on the amount reported.

3. The valuation at risk (as defined above) shall be reported to the Underwriter as follows:

(a) Valuation at risk at the inception of this insurance to be declared as soon as practicable.

(b) Valuation at risk as of the end of each calendar month thereafter to be declared not later than 15 days immediately following.

4. Premium shall be payable monthly at the rate of —— percent per month. Premium for periods of less than one month shall be payable at the daily pro rata of the monthly rate. The premium for each month or part thereof shall be computed on the average of the last two successive reports. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of the "Maritime Adm.—Transportation."

5. Attaching as of the date and time the first material destined for inclusion as a part of the vessel becomes at risk at the shipyard of the Builder and expiring as of the date and time the vessel first becomes waterborne after launching. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

6. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this Policy shall thereupon become null and void and of no effect as of midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administration, by telegraph, of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance, this insurance provided hereunder shall ipso facto terminate.

7. Warranted that for and during the term of this Policy the vessel is an American vessel as defined in section 1201(a), Title XII of Merchant Marine Act, 1936, as amended, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this Policy shall automatically terminate at the time of such requisition or change and daily pro rata return of premiums shall be made.

8. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this Endorsement or the Policy to which it is attached, is not paid within thirty days after receipt by the Assured of notice of the amount thereof, this insurance shall, notwithstanding any other provision for cancellation become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

9. Warranted, no cancellation except by mutual consent except as provided in paragraphs 6, 7, and 8 above.

Form MA-283(B) (Revised 5-61)

CLAUSES FOR BUILDER'S RISK

(Postlaunching Period—Excess)

Endorsement attached to and made a part of Policy WRBR —— issued to ——.

The terms and conditions as set forth below shall supersede and nullify the clauses of the Policy in so far as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder is $—— , being the excess of $—— primary insurance, and this insurance to pay only that part of any loss, damage or expense covered hereunder which is in excess of the amount payable under the primary insurance but the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the amount insured: *Provided*, That the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress: *And provided further*, That the amount payable under this insurance for damage to or the total or constructive total loss of the vessel, after all sums due and payable under primary and excess insurances written by

commercial Underwriters have been exhausted, shall be the balance, if any, of said claim: *And provided further,* That in no event shall the amount of such liability to an insured Owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. In the event the primary insurance is cancelled through the operation of any automatic termination clause applicable thereto, the amount insured under the policy to which this endorsement is attached shall, at an additional premium to be fixed by the Maritime Administrator, be automatically increased by the amount of the primary insurance and thereupon insurance under the Policy shall become primary insurance and Paragraph 1 of this Endorsement shall be deemed to be deleted herefrom and Paragraph 1 of Endorsement Form MA-283 (C) substituted therefor, all other terms and conditions to remain the same.

3. Whereas the value stated herein is provisional and is based upon the estimated contract price, the parties to this insurance agree that the full value of the subject matter of this insurance, to be ascertained in accordance with the completed contract, shall be the basis of this insurance. Should the value for insurance, determined as above:

(I) Exceed the value stated herein, the Assured agrees to declare to the Underwriter the amount of such excess and to pay premium thereon at the full policy rate, and the Underwriter agrees to accept its proportionate share of the increase, or

(II) Be less than the value stated herein, the sum insured by this Policy shall be reduced proportionately, and the Underwriter agrees to return premium, at the full policy rate, on the amount by which its line is reduced.

4. Premium shall be payable at the rate of —— percent. In the event of cancellation of insurance hereunder by reason of early delivery of the vessel, the Underwriter agrees to return monthly pro rata premium for each uncommenced month or portion thereof. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of the "Maritime Adm.—Transportation."

5. Attaching as of the date and time the vessel first becomes water-borne after launching and expiring as of the date and time the vessel is delivered by the Builder. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

6. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this Policy shall thereupon become null and void and of no effect as of midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administration, by telegraph, of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to disptach of such notice. Upon the dispatch of such notice of non-acceptance, this insurance provided hereunder shall ipso facto terminate.

7. Warranted that for and during the term of this Policy the vessel is an American vessel as defined in section 1201(a), Title XII of Merchant Marine Act, 1936, as amended, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this Policy shall automatically terminate at the time of such requisition or change and deaily pro rata return of premium shall be made.

8. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this Endorsement or the Policy to which it is attached, is not paid within thirty days after receipt by the Assured of notice of the amount thereof, this insurance shall, notwithstanding any other provision for cancellation become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

9. Warranted, no cancellation except by mutual consent excpet as provided in paragraphs 6, 7, and 8 above.

Form MA-283(C) (Revised 5-61)

Clause for Builder's Risk

(Postlaunching Period—Primary)

Endorsement attached to and made a part of Policy WRBR —— issued to ——.

The terms and conditions as set forth below shall supersede and nullify the clauses of the Policy in so far as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder is $—— but the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised,

settled, adjudged or paid shall not exceed the amount insured hereunder: *Provided*, That the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress; And provided further, That in no event shall the amount of such liability to an insured Owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. Whereas the value stated herein is provisional and is based upon the extimated contract price, the parties to this insurance agree that the full value of the subject matter of this insurance, to be ascertained in accordance with the completed contract, shall be the basis of this insurance.

Should the value for insurance, determined as above—

(I) Exceed the value stated herein, the Assured agrees to declare to the Underwriter the amount of such excess and to pay premium thereon at the full policy rate, and the Underwriter agrees to accept its proportionate share of the increase, or

(II) Be less than the value stated herein, the sum insured by this Policy shall be reduced proportionately and the Underwriter agrees to return premium, at the full policy rate, on the amount by which its line is reduced.

3. Premium shall be payable at the rate of ——— percent. In the event of cancellation of insurance hereunder by reason of early delivery of the vessel, the Underwriter agrees to return monthly pro rata premium for each uncommenced month or portion thereof. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of "Maritime Adm.—Transportation".

4. Attaching as of the date and time the vessel first becomes water-borne after launching and expring as of the date and time the vessel is delivered by the Builder. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

5. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this Policy shall thereupon become null and void and of no effect as of midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administration, by telegraph, of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance, this insurance provided hereunder shall ipso facto terminate.

6. Warranted that for and during the term of this Policy the vessel is an American vessel as defined in section 1201(a), Title XII of Merchant Marine Act, 1936, as amended, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this Policy shall automatically terminate at the time of such requisition or change and daily pro rata return of premium shall be made.

7. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this Endorsement or the Policy to which it is attached, is not paid within thirty days after receipt by the Assured of notice of the amount thereof, this insurance shall, notwithstanding any other provision for cancellation become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

8. Warranted, no cancellation except by mutual consent except as provided in paragraphs 5, 6, and 7 above.

Form MA-283(D) (Revised 5-61)

WAR RISK CLAUSES FOR BUILDER'S RISK

Endorsement attached to and made part of Policy WRBR ——— issued to ———.

HULL WAR RISK CLAUSES

It is agreed that this insurance covers only those risks which would be covered by the attached Policy (including the Collision Clause) in the absence of the F.C. & S. Warranty contained therein but which are excluded by that warranty. This insurance is also subject, however, to the following warranties and additional clauses:

1. The Adventures and Perils Clause shall be construed as including the risks of hostilities or warlike operations, piracy, civil war, revolution, rebellion or insurrection or civil strife arising therefrom, floating and/or stationary mines and/or torpedoes whether derelict or not, weapons of war employing atomic or nuclear fission and/or fusion or other reaction, or radioactive force or matter, and the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, but

excluding arrest, restraint, or detainment under customs or quarantine regulations, and similar arrests, restraints, or detainments not arising from actual or impending hostilities or sanctions.

2. The provisions of the attached Policy with respect to constructive total loss shall apply only to claims arising from physical damage to the insured vessel.

3. Warranted free from any claim for delay or demurrage and warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured.

4. Warranted free from any claim based upon loss of or frustration of the insured voyage or adventure caused by arrests, restraints or detainments, of kings, princes or peoples.

5. Warranted free from any claim arising from capture, seizure, arrest, restraint, detainment, pre-emption, confiscation or requisition by the Government of the United States.

PROTECTION AND INDEMNITY WAR RISK CLAUSES

It is further agreed that this insurance covers those Protection and Indemnity risks which would be covered by the attached Policy in the absence of the F. C. & S. Warranty and the following clause contained therein but which are excluded by that warranty and clause:

"Notwithstanding anything to the contrary contained in these Protection and Indemnity Clauses, the Underwriter shall not be liable for or in respect of any loss, damage, liability or expense excluded by the F. C. & S. Warranties hereinafter set forth; or sustained or caused by mines or torpedoes, whether of enemy or friendly origin; or sustained in consequence of placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; or any such loss, damage and expense shall be excluded from this Policy without regard to whether the Assured's liability in respect thereof is based on negligence or otherwise, and whether in time of peace or war."

1. This insurance also to cover liability of the Assured for contractual repatriation expenses of any member of the crew as a result of perils insured hereunder.

2. Claims for which the Underwriter shall be liable under these clauses shall not be subject to any deduction.

3. The liability of the Underwriter under these clauses in respect of any one accident or series of accidents arising out of the same casualty shall be limited to the sum hereby insured.

4. The Underwriter agrees to accept the same percentage interest under these clauses as accepted on Hull War Risks.

5. This Protection and Indemnity Insurance shall terminate automatically at the same time as the Hull Insurance against War Risks.

6. Notwithstanding the provisions of the preceding clause, in the event of loss or shipwreck of the vessel from any cause prior to natural expiry time of this policy, this insurance shall continue to cover the liability of the Assured to the crew of the insured vessel, subject to its terms and conditions and at an additional premium if so required by the Underwriter, until the crew shall be either discharged or landed at a port or place to which the Owners or Charterers are obliged to bring them.

7. Notwithstanding any of the foregoing provisions, all liabilities covered by the Second Seamen's form of policy are excluded from this insurance.

§ 308.410 Reporting casualties and filing claims.

Casualties shall be reported promptly to, and all claim documents filed with the Maritime Administration, Attention: Director, Office of Trade Analysis and Insurance, Washington, DC 20590.

[26 FR 4541, May 26, 1961, as amended at 53 FR 8189, Mar. 14, 1988]

§ 308.411 Effective date.

This subpart shall become effective as to policies issued on and after June 8, 1961.

Subpart F—War Risk Cargo Insurance

I—INTRODUCTION

§ 308.500 Authority.

The Secretary of Transportation delegated authority to the Maritime Administrator to perform the functions vested in the Secretary of Transportation by Title XII of the Merchant Marine Act, 1936, as amended, which authority includes the insurance set forth in this Subpart as provided under section 1203(b) of the Act.

§ 308.501 Cargoes on which coverage is available.

When this order becomes effective as provided in § 308.552, the Maritime Administrator will be prepared to provide marine insurance against loss or damage by the risks of war under approved clauses on shipments of cargoes coming within one or more of the following categories:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201(a) of the Merchant Marine Act, 1936, as amended;

(b) Shipped or to be shipped on any foreign flag vessels owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

For the purposes of this Subpart F—War Risk Cargo Insurance, the terms "cargo" and "cargoes" as used herein shall include loaded or empty containers located aboard U.S.-flag and foreign-flag vessels insured under Title XII, Merchant Marine Act, 1936, as amended.

Cargo war risk insurance will be written under either an open policy or a facultative policy in accordance with the provisions of this subpart.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 43 FR 54095, Nov. 20, 1978]

§ 308.502 Additional insurance.

The assured may place increased value or additional insurance in other markets beyond the amount of insurance provided by the Maritime Administrator, but such insurance must be non-participating with the Maritime Administrator's coverage, and without benefit of salvage or right of contribution.

§ 308.503 Rate schedules.

Rate schedules published by the Maritime Administrator may be obtained from an underwriting agent. All rate schedules are subject to change by the Maritime Administrator at any time without notice. If no rate is published for a voyage on which war risk coverage is available, the Maritime Administrator will name a rate through an underwriting agent upon application.

§ 308.504 Definition of territories and possessions.

Whenever reference is made to the territories and possessions of the United States in this subpart or in any supplement thereto or any policy of insurance issued pursuant to the provisions thereof, said territories and possessions shall be deemed to include only the Virgin Islands of the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, Wake Island, Midway Islands, and the Panama Canal Zone.

II—OPEN POLICY WAR RISK CARGO INSURANCE

§ 308.505 General.

The Maritime Administrator is prepared to provide an open cargo war risk insurance policy covering any cargoes described in § 308.501. The policy will be in the standard form of War Risk Open Cargo Policy, Form MA-300, prescribed in § 308.517. All policies will be issued by underwriting agents appointed by the Maritime Administrator. All underwriting agents will be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

§ 308.506 Application for an open cargo policy.

Application for an Open Cargo Policy shall be made by filing Form MA-301, prescribed in § 308.521, with an underwriting agent of the Maritime Administration. The application shall state the applicant's name and address; the person or persons to whom loss shall be payable; the nature and geographic scope of the shipments to be covered under the policy which shall not be broader than the coverage authorized in § 308.501; the requested effective date, which shall not be earlier than the date of the completion of the requirements for the issuance of the policy; and the basis of valuation to be incorporated in the policy. An applicant may specify one basis of valuation for imports and another for exports, and he may specify different bases of valuation for different commodities or voyages, provided that each basis of valuation specified by the applicant shall define the value by the use of facts which existed prior to the date of the shipment and which are readily ascertainable by either party after the safe arrival or loss of the shipment.

§ 308.507 Security for payment of premiums.

Clause 21 of the policy requires the assured to maintain with the Maritime Administrator a collateral deposit fund or a surety bond, to secure the payment of the premiums, in an amount which shall at all times exceed the unpaid premiums on all risks which have attached under the policy. The minimum amount of the fund or of the surety bond shall be $1,000. Clause 21 also provides that, within seven (7) days from the time knowledge comes to the assured that the amount of the deposit or the surety bond is insufficient to meet the requirements of Clause 21, the assured shall deposit additional collateral or increase the surety bond in an amount not less than double the amount of such insufficiency, and for a sum which shall be a multiple of $500. If the assured fails to increase the deposit or the surety bond within the seven (7) day period, the policy automatically becomes void at the end of the seven (7) day period except as to risks which have attached prior to that date. The procedure for establishing a collateral deposit fund is prescribed in § 308.509, and the procedure for posting and maintaining a surety bond is prescribed in § 308.510. An application for the issuance of an open cargo policy shall be ineffective unless a collateral deposit fund is established and maintained, or a surety bond is posted and maintained, in accordance with the provisions of this section and §§ 308.509 and 308.510.

§ 308.508 Issuance of an open cargo policy.

(a) *Time.* The underwriting agent will issue an Open Cargo Policy within (15) days after the completion by the applicant of the requirements set forth in §§ 308.506 and 308.507 unless the time for issuance is extended by the Maritime Administrator in writing. The underwriting agent may not make any Open Cargo Policy effective with respect to shipments attaching on a date earlier than the date when the application was completed, but he may make it effective on the date of the completion of the application or any date thereafter requested by the applicant.

(b) *Numbering.* Each Open Cargo Policy supplied to the underwriting agent by the Maritime Administrator shall be numbered by the Maritime Administration before it is supplied to the underwriting agent. No two numbers shall be the same. The underwriting agent when issuing the policy shall add at the end of the policy number the agency number assigned to that underwriting agent, and where policies are issued by more than one office of an underwriting agent, the issuing office shall also be identified in the policy number. For example, policies issued by an office in New York will be designated by "NY" and policies issued in San Francisco will be designated by

"SF" prefixed to the underwriting agent's agency number.

§ 308.509 Collateral deposit fund.

(a) *Requirements.* An assured electing to use a cash collateral deposit fund pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of the Open Cargo Policy, Form MA-300, prescribed in § 308.517.

(b) *Cash or Government bonds.* To establish a collateral deposit fund the applicant shall deposit with the underwriting agent a check payable to the order of the "Maritime Adm.—Transportation" for the amount of the fund, or United States Government bonds having a par value at the time of deposit of the amount of the fund, which shall be a multiple of $500 but not less than $1,000, together with a letter of transmittal executed by the applicant on Form MA-302, prescribed in § 308.522. Upon receipt of the deposit, the underwriting agent shall assign a serial number to it and transmit it to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, DC 20590. It is the responsibility of the assured to make sure that this deposit fund is sufficient at all times to cover the premiums payable on all risks which have attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, the Maritime Administrator may deduct from the assured's collateral deposit fund all amounts due.

(d) *Increase in amount of collateral as required by Clause 21.* If the assured fails to deposit additional collateral in the fund within seven (7) days from the time knowledge comes to the assured that the amount of collateral is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(e) *Changes in amount of collateral.* The assured may increase or decrease the amount of the collateral deposit fund by amounts of not less than $500 or multiples thereof, provided that the amount of the fund shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the collateral deposit shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of collateral in the fund shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(f) *Increase of collateral.* To increase the amount of the collateral on deposit in the fund, the assured shall transmit to the underwriting agent on Form MA-302, prescribed in § 308.522, a check payable to the order of the "Maritime Adm.—Transportation" or United States Government bonds having a par value at the time of deposit of not less than the amount of the requested increase. The increase shall become effective upon the date of the receipt of the application and check or bonds by the underwriting agent as shown on Form MA-302.

(g) *Decrease of collateral.* To decrease the collateral deposit fund, the assured shall file with the underwriting agent an application on Form MA-305, prescribed in § 308.525. The decrease shall become effective upon the date of the receipt of the application by the underwriting agent as shown on Form MA-305.

(h) *Refund of collateral.* Whenever the assured becomes entitled to a refund of the collateral deposit, in whole or in part, by reason of a request for a partial return of such collateral, or the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the collateral deposit fund because the assured is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a surety bond in the place and stead of the collateral deposit fund, as provided in § 308.510(j), the Maritime Administrator will refund to the assured the amount of the collateral deposit to which the assured is entitled; provided, however, that the repayment of such collateral shall not be made by the Maritime Administrator until the assured has filed a closing report and paid in full all premiums with respect to all shipments which had attached at the time of the receipt by the underwriting agent of the application for the refund, Form MA-305, and a certificate executed in duplicate on Form MA-306, prescribed in § 308.526, and, in the event of the substitution of a surety bond for the collateral deposit fund, the receipt by the underwriting agent of the surety bond properly executed, in accordance with § 308.510.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 33 FR 2944, Feb. 14, 1968; 45 FR 22042, Apr. 3, 1980]

§ 308.510 Surety bond.

(a) *Requirements.* An assured electing to post a surety bond pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of the Open Cargo Policy, Form MA-300, prescribed in § 308.517.

(b) *Amount of bond.* An applicant who wishes to post a surety bond shall deliver to the underwriting agent a surety bond on Form MA-308, prescribed in § 308.528, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500 but shall not be less than $1,000. Upon receipt of the surety bond, the underwriting agent shall assign a serial number to it and transmit it to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, DC, 20590. It is the responsibility of the assured to make sure that the amount of the bond is sufficient at all times to cover the premium payable on all risks which have attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Surety.* The sufficiency of the surety executing the bond shall be subject to approval by the Maritime Administrator. The underwriting agent may accept on behalf of the Maritime Administrator a surety bond executed by a surety named on the United States Treasury Department's approved list of sureties whose bonds are acceptable to the United States Treasury Department to secure obligations due the United States, provided the bond is within the maximum amount for which the surety is so authorized to write bonds as shown by the approved list.

(d) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, all amounts due shall become a liability collectible under the surety bond and from the assured.

(e) *Increase in amount of bond as required by Clause 21.* If the assured fails to increase the amount of the surety bond within seven (7) days from the time knowledge comes to the assured that the amount of the bond is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(f) *Changes in amount of bond.* The assured may increase or decrease the amount of the surety bond by amounts of not less than $500 or multiples thereof, provided that the amount of the bond shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the bond shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of the bond shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(g) *Increase in amount of bond.* To increase the surety bond the assured shall transmit to the underwriting agent, on Form MA-310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety company on Form MA-311, prescribed in § 308.531. The increase shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA-311.

(h) *Decrease in amount of bond.* To decrease the amount of the bond, the assured shall transmit to the underwriting agent, on Form MA-310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety on Form MA-311, prescribed in § 308.531. The decrease shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA-311, except as to shipments which on that date are known or reported to the assured to be in transit and which have attached under the policy and upon which premium has not been paid in full.

(i) *Termination of bond.* Whenever the assured becomes entitled to a termination of a surety bond by reason of the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the surety bond by an assured which is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a collateral deposit fund in the place or stead of the surety bond, the underwriting agent shall execute a release on Form MA-312, prescribed in § 308.532. The release shall be made effective as of: (1) The effective date of the cancellation of the policy when the bond is terminated for that reason, or (2) the date of the Maritime Administrator's directive waiving the requirement of a surety bond when the bond is terminated for that reason, or (3) the effective date of the establishment of a collateral deposit fund when the bond is terminated for that reason.

(j) *Substitution of bond for collateral deposit.* An assured may substitute a surety bond for a collateral deposit fund by delivering to the underwriting agent a surety bond on Form MA-309, prescribed in § 308.529, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500, but shall not be less than $1,000. The collateral deposit fund will be refunded to the assured after the bond has been posted, in accordance with the provisions of § 308.509(h).

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

§ 308.511 Cancellation of Open Cargo Policy.

An assured may cancel an Open Cargo Policy by delivering to the underwriting agent, at least fifteen (15) days prior to the requested date of cancellation, an application for cancellation executed by the assured on Form MA-304, prescribed in § 308.524, together with the original policy. The policy shall be cancelled as of the effective date requested in the application, which, unless otherwise agreed by the Maritime Administrator in writing, shall not be a date earlier than fifteen (15) days following the date of the receipt of the application as acknowledged by the underwriting agent on Form MA-304, with respect to all risks that have not attached prior to said effective date. Such cancellation shall not relieve the assured of the obligation to file closing reports with respect to all risks which attached prior to the effective date of the cancellation and to pay all unpaid premiums. Within four (4) months of the effective date of cancellation unless otherwise agreed by the Maritime Administrator in writing, the assured must file a closing report in duplicate on Form MA-313, prescribed in § 308.533, of all shipments covered by the policy for which closing reports have not been previously filed. The assured shall mark this closing report "Final Closing Report on Cancellation of Policy", and file a certificate on Form MA-313-B, prescribed in § 308.535, executed by the assured in duplicate. Thereafter when all unpaid premiums have been paid, the assured will become entitled to a refund of the collateral deposit, or cancellation of the surety bond in accordance with §§ 308.509 and 308.510. If the assured has lost or mislaid the original policy and is unable to produce it for cancellation, the assured shall execute a letter of indemnity and such other documents as may be required by the Maritime Administrator.

§ 308.512 Declaration of shipments under open cargo policy.

(a) *Closing report.* The assured must file with the underwriting agent, not later than the twenty-fifth day of each month, a closing report for all inward shipments and a closing report for all outward shipments, and pay the premium and fees, for all shipments covered during the preceding calendar month, as required by Clause 19. Each closing report shall be filed in duplicate on Form MA-313, prescribed in § 308.533, supported by a certificate executed by the assured on Form MA-313-A, prescribed in § 308.534. If the assured has no shipments to report during any calendar month, the closing report, Form MA-313, must nevertheless be filed with one or both of the following statements, depending upon their applicability, noted thereon:

(1) It is certified that no inward shipment coming within the scope of this policy arrived at destination during the preceding calendar month, and that during the preceding calendar month no knowledge has come to the assured of an inward shipment covered under the terms of the policy which will not arrive by reason of loss, frustration or other similar cause.

(2) It is certified that no outward shipment coming within the scope of this policy was made during the preceding calendar month.

Whenever a sea passage is made with respect to cargo covered under the policy by a barge or sailing vessel the assured shall note that fact upon the closing report, unless the Maritime Administrator otherwise agrees. An assured reporting for one calendar month must not include therein a report of a shipment due to be reported in the report for the next succeeding calendar month. Thus, the report of January closing shipments filed in February should not include February closings.

(b) *Inward shipments.* The closing report covering inward shipments shall include (1) all such shipments which have arrived at the port of destination during the preceding calendar month, and (2) all such shipments with respect to which inability to so arrive by reason of loss, frustration, or other similar causes has come to the knowledge of the assured during the preceding calendar month.

(c) *Outward shipments.* The closing report covering outward shipments shall include all such shipments which attached under the policy during the preceding calendar month.

(d) *Definition of inward and outward shipments.* A shipment will be classified as an inward shipment or as an outward shipment by reference to the geographical location of the assured with respect to the movement of the shipment. The address of the assured as stated in the application filed by him for the policy shall be deemed to be the assured's geographical location for the purpose of determining whether the shipment is inward or outward. To illustrate, if an assured has stated in his application that his address is in Hawaii, the assured's shipments of goods from the United States to Hawaii would be classified as inward, and his shipments from Hawaii to the United States would be classified as outward. Any shipments that cannot be classified as inward or outward under this definition shall be treated as inward shipments for the purposes of the declaration.

(e) *Supplemental closing report.* If an assured files a closing report and thereafter discovers that one or more additional shipments should have been included in the report, then, even though the assured has executed the certificate on Form MA-313-A, prescribed in § 308.534, or Form MA-313-B, prescribed in § 308.535, in connection with the closing report, the assured must nevertheless amend the closing report by filing a supplemental closing report supported by an appropriate certificate. The supplemental closing report must be accompanied by a statement in writing signed by the assured giving the reasons for the omission of such shipments from the original closing report. If the Maritime Administrator finds that the failure to file the complete closing report was either inadvertent or unintentional or arose by reason of causes beyond the control of the assured, the otherwise automatic termination of the policy by reason of a breach of the warranty embodied in Clause 20 shall be avoided pursuant to the provisions of Clause 23.

§ 308.513 Payment of premiums and fees.

The assured must pay the premium, when his closing report is filed, for all shipments shown on his closing report for the preceding month, at the rates prescribed by the Maritime Administrator and in effect (a) on the date of the ocean bill of lading, or (b) if an ocean bill of lading was not issued, on the date of the equivalent shipping document, or (c) if no ocean bill of lading or equivalent shipping document was issued, or if such documents were undated, on the date the goods were laden on the overseas vessel, as required by Clause 19. All payments of premium or fees must be made by check or money order payable to the order of the "Maritime Adm.—Transportation".

§ 308.514 Return premium.

No premium will be returned to the assured with respect to a shipment of goods that attached under the policy except where there was a declaration of value at variance with Clause 8, or an error in the application of a rate or in the computation of a premium, or the insured goods were short-shipped. An application for the return of a premium shall be made on Form MA-307, prescribed in § 308.527, filed in duplicate with the underwriting agent who will transmit it to the Maritime Administrator for payment.

§ 308.515 Payment in event of loss.

All claims for losses shall be filed by the assured with the underwriting agent who issued the policy. Such claims must be supported by the customary documents required in connection with war risk insurance claims, together with appropriate declarations as required by Clause 9, and such further data as may now or hereafter be required by the Maritime Administrator.

§ 308.516 Failure to comply with Clause 21.

(a) If the assured willfully fails to maintain a collateral deposit fund or a surety bond in an amount sufficient to meet the requirements of Clause 21, the policy becomes void from the date the fund or bond was first insufficient, but, if the assured's failure was inadvertent, the policy may be reinstated when the assured complies with Clause 21, and shows to the satisfaction of the Maritime Administrator that his failure was inadvertent and not willful. If the failure was in fact inadvertent, the assured shall file a declaration on Form MA-314, prescribed in § 308.536, executed in duplicate, with the underwriting agent within seven (7) days from the time knowledge comes to the assured of the insufficiency of the collateral deposit fund or surety bond unless the time for filing such declaration is extended by permission of the Maritime Administrator. If the space provided in the declaration, Form MA-314, for an explanation of the circumstances by which the assured first had knowledge that the collateral became exceeded is not sufficient, the assured should attach to the declaration a detailed statement and include the same by reference in the declaration.

(b) If any policy becomes void by reason of the failure of the assured to deposit additional collateral or increase the amount of its surety bond under the provisions of Clause 21, the

Maritime Administrator reserves the right to refuse to issue another policy to such assured for a period of 90 days.

§ 308.517 Open cargo policy, Form MA-300.

The following is the standard form of War Risk Open Cargo Policy:

Form MA-300 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

WAR RISK OPEN CARGO POLICY NO. WROC

CLAUSE 1. *Assured.* The United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation (herein called the "Underwriter"), in consideration of the premiums as computed and agreed to be paid pursuant to Clause 19, and of the establishment and maintenance of a collateral deposit fund or the posting and maintenance of a surety bond pursuant to Clause 21, and in accordance with applicable provisions of law and subject to all limitations thereof particularly title XII, Merchant Marine Act, 1936, as amended, (herein called the "Act"), hereby insures ——— (herein called the "Assured"), against War Risks Only, in accordance with the terms and conditions hereinafter set forth. This policy is issued on behalf of the Underwriter by ——— (herein called the "Underwriting Agent").

CLAUSE 2. *Loss payable.* Loss, if any, payable, in funds current in the United States of America, to the order of the Assured thirty days after satisfactory proofs of loss and proofs of interest have been filed with the Underwriting Agent.

CLAUSE 3. *Goods insured.* To attach, as provided in clauses 5 and 13, upon all shipments of lawful goods and/or merchandise consisting principally of ————— which come within one or more of the following categories, as required by section 1203 (b) of the Act:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions,

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

CLAUSE 4. *Insurable interest.* To cover all shipments:

(a) *By assured.* Shipped or consigned to, or by, the Assured for his account and risk;

(b) *By others for assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured;

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel;

(d) *Sold after attachment of risk.* Shipped to, by, or at the direction of the Assured and sold by the Assured subsequent to the attachment of risk hereunder on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods.

CLAUSE 5. *Attachment.* To attach, as provided in Clause 13, on all shipments made on or after ———:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

Clause 6. *Conveyance.* By overseas vessels and connecting conveyances.

Clause 7. *Voyages covered.* At and from ———— to ————.

Clause 8. *Valuation.* Goods insured hereunder shall be valued at ————.

Clause 9. *Limits on amount payable for loss*—(a) *Fair market value at commencement of risk.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value of the lost or damaged goods at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(b) *Fair market value at port of arrival.* If it is impossible to determine the fair market value at the place and approximate time of the attachment of risk, as provided in paragraph (a) of this clause, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value at the designated port of arrival on the date of the attachment of risk, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(c) *Purchase price less discount.* If the lost or damaged goods were purchased by the named Assured prior to loading on board the overseas vessel, the Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations provided for in paragraphs (a) and (b) of this clause, stating that the amount claimed does not exceed the actual amount paid or payable to the seller for the goods less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. If Standard Optional Endorsement No. 2, Form MA-300-B, has been executed, and if the lost or damaged goods were purchased by the principal named in Endorsement No. 2, the declaration provided for in this paragraph shall be signed by both the agent and the named principal.

(d) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations required by paragraphs (a), (b), or (c) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writings by the Maritime Administrator for good cause shown.

(e) *Criminal Code.* The declarations required to be filed pursuant to this clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

AMERICAN INSTITUTE WAR CLAUSES

Clause 10. *War risks only.* This insurance is only against the risks of capture, seizure, destruction or damage by men-of-war, piracy, takings at sea, arrests, restraints, detainments and other warlike operations and acts of kings, princes and peoples in prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, or civil strife arising therefrom; and including the risks of aerial bombardment, floating or stationary mines and stray or derelict torpedoes, and weapons of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter; but excluding claims for delay, deterioration and/or loss of market, and warranted not to abandon (on any ground other than physical damage to ship or cargo) until after condemnation of the property insured.

Clause 11. *Arrests, restraints.* Warranted free from any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests, restraints or detainments.

Clause 12. *Commandeering.* This insurance does not cover any loss or damage caused by or resulting from any of the following causes:

(a) Commandeering, preemption, requisition or nationalization by the government (de facto or otherwise) of the country to or from which the goods are insured.

(b) Seizure or destruction under quarantine or custom regulations.

Clause 13. *Period covered.* (a) The insurance against the risks enumerated in Clause 10, except the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, referred to in Clause 13(b) below, shall not attach to the interest hereby insured or to any part thereof—

(1) Prior to being on board an overseas vessel (for the purpose of this Clause 13 an overseas vessel shall be deemed to mean a vessel carrying the interest from one port or place to another where such voyage involves a sea passage by that vessel);

(2) After being discharged overside from an overseas vessel at the final port of discharge; or

after the expiry of fifteen (15) days counting from midnight of the day of arrival of the overseas vessel at the final port of discharge whichever shall first occur;

(3) After expiry of fifteen (15) days from midnight of the day of arrival of the overseas vessel at an intermediate port or place to discharge the interest for on-carriage from that or any other port or place by another overseas vessel, but shall re-attach as the interest is loaded on the on-carrying overseas vessel. During the said period of fifteen (15) days the insurance remains in force whether the interest is awaiting transit or in transit between the overseas vessels.

(b) The insurance against the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, attaches as the interest hereby insured is first loaded on lighter, craft, or vessel after leaving the warehouse at point of shipment in transit for the destination declared hereunder, and ceases to attach as the interest is finally landed from the vessel, craft or lighter prior to delivery to warehouse at such destination.

If the contract of affreightment is terminated at a port or place other than the destination named therein such port or place shall be deemed the final port of discharge for the purpose of this clause.

It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control.

If anything contained in this policy shall be inconsistent with this Clause 13 it shall to the extent of such inconsistency be null and void.

Clause 14. *Deviation.* This insurance shall not be vitiated by deviation, overcarriage, change of voyage, or by any error or unintentional omission in the description of interest, vessel or voyage, provided the same be communicated to the Underwriting Agent as soon as known to the Assured and an additional premium paid if required.

Clause 15. *Sue and labor.* In case of any loss or misfortune, it shall be lawful and necessary to and for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or the Underwriter, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; and to the charges whereof, the Underwriter will contribute according to the rate and quantity of the sum hereby insured.

Clause 16. *General average.* General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or as per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

Clause 17. *Collision.* No claim shall be payable hereunder which arises from collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this paragraph "power" includes any authority maintaining naval, military or air forces in association with a power.

SPECIAL CLAUSES

Clause 18. *Transit interrupted.* If the ordinary course of transit of the goods hereby insured is interrupted or terminated by the shipper, consignee, or Assured or any party acting on their behalf, this insurance shall forthwith terminate.

Clause 19. *Closing report.* It is warranted that not later than the 25th day of each calendar month, the Assured will file with the Underwriting Agent closing reports in the manner and form required by such regulations as may be promulgated by the Maritime Administrator from time to time of all shipments coming within the scope of this policy.

(a) As to inward shipments as defined in section 308.512 of Maritime Administration General Order No. 75 such reports must include

(1) All shipments which have arrived at port of destination during the preceding calendar month, and

(2) All shipments with respect to which inability to so arrive by reason of loss frustration or other similar cause has come to the knowledge of the Assured during the preceding calendar month, and

(b) As to outward shipments as defined in section 308.512 of Maritime Administration General Order 75 which attached under the policy during the preceding calendar month.

And will pay premium thereon at the rate prescribed by the Maritime Administrator and in effect:

(1) On the date of the ocean bill of lading, or

(2) If an ocean bill of lading was not issued, on the date of the equivalent shipping document, or

(3) If no ocean bill of lading or equivalent shipping document was issued, or if such documents were undated, on the date the goods were laden on an overseas vessel.

CLAUSE 20. *Breach of policy.* It is understood and agreed that whenever any premium is not paid when due, or any closing report is not filed as prescribed by Clause 19 hereof, the effect is such that a breach of the policy terms and conditions has been made by the Assured, and the policy automatically ceases to insure any shipment which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium or closing report, unless within the said fifteen (15) day period, the premium is paid or the closing report as required by Clause 19 hereof is filed with the Underwriting Agent, and a reinstatement fee of Twenty-five ($25) Dollars is paid by check or United States Postal Money Order payable to the Order of the "Maritime Adm.—Transportation", together with the amount of premium due, if any.

CLAUSE 21. *Collateral.* It is warranted that the Assured will at all times maintain with the Maritime Administrator a Collateral Deposit Fund or that in lieu of such Collateral Deposit Fund a Surety Bond in the form prescribed by the Maritime Administrator will be filed with the Underwriting Agent and maintained in full force and effect for the purpose of securing payment of premium hereunder. In the event that the Assured inadvertently fails to maintain such a Collateral Deposit Fund or such a Surety Bond in an amount sufficient so that at all times such amount is in excess of the unpaid premium then or thereafter payable with respect to any or all risks which have attached under the terms of the policy, it shall be a condition of this insurance that unless the Assured shall within seven (7) days from the time such insufficiency comes to the knowledge of the Assured deposit additional collateral or increase the surety bond in an amount not less than double the amount of such insufficiency and for a sum which shall be in even multiples of $500, this policy shall be void at the end of such seven (7) day period except as to risks which shall have attached prior to such voidance of this policy.

Notwithstanding the foregoing, however, if the Maritime Administrator shall determine that the failure of the Assured to maintain a sufficient Collateral Fund or Surety Bond was willful rather than inadvertent, said policy shall be void from the date said Collateral Fund or Surety Bond was first insufficient to secure the premiums on risks which would otherwise have attached hereunder.

CLAUSE 22. *Books and records.* The Assured warrants and agrees that it will regularly keep books, records and accounts in such manner and form that all information available to the Assured as to the amounts at risk and the amounts of losses incurred and premiums due can be readily ascertained therefrom by the Maritime Administrator. The Assured, as often as may be reasonably required, shall exhibit such books, records and accounts to any person designated by the Maritime Administrator, and submit to examinations under oath by any person named by the Maritime Administrator, and subscribe the same.

CLAUSE 23. *Unintentional error.* This insurance shall not be invalidated by any error, or omission in the filing of Closing Reports which is demonstrated to the satisfaction of the Maritime Administrator to have been inadvertent or unintentional, or by any failure to report which is demonstrated to the satisfaction of the Maritime Administrator to have arisen from causes beyond the control of the Assured. The Maritime Administrator, or his representative duly authorized in writing, may waive strict compliance with any warranty or condition of this insurance to the extent that he may determine that it imposes a hardship on any claimant in good faith hereunder which would not be imposed in connection with a policy issued in accordance with commercial practice in the marine insurance business, and to the extent that he may determine that such waiver is not contrary to the provisions of title XII of the Merchant Marine Act, 1936, as amended, under which the Policy is issued. In any determination as aforesaid the decision of the Maritime Administrator, or his duly authorized representative, shall be conclusive upon all parties thereto.

CLAUSE 24. *Goods excluded.* This policy does not cover shipments of specie, currency, securities, valuable documents, jewelry, precious stones, gold and silver and other precious metals, nor any articles transported by means of ordinary mail or air-mail or registered mail or parcel post.

CLAUSE 25. *Special coverage.* No shipment of cargo coming within the scope of this policy shall attach hereunder subsequent to the sailing of the carrying vessel from the original port of loading with respect to such cargo. Notwithstanding the foregoing provision an Assured may specially declare to his Underwriting Agent any shipment excluded from coverage by the preceding sentence, in which event insurance shall attach hereunder, if vessel and interest insured is safe in port on date of such declaration, or shall attach upon the safe arrival of vessel and interest insured at first port thereafter, warranted no known or reported loss of or damage to said vessel and interest insured at time of attachment.

CLAUSE 26. *Partial loss.* In case of partial loss by perils insured against, the proportion of loss shall be determined by a separation of the damaged portion of the insured property from the sound and by an agreed estimate (by survey) of the percentage of damage of such portion; or if such agreement is not practicable, then by public sale of such damaged portion for the account of the owner of the property, and by comparison of the amount so realized with the applicable valuation limit provided in Clause 9.

CLAUSE 27. *Labels clause.* In case of damage affecting labels, capsules or wrappers, the Underwriter, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall the Underwriter be liable for more than the insured value of the damaged merchandise.

CLAUSE 28. *Carrier clause.* Warranted that this insurance shall not insure, directly or indirectly, to the benefit of any carrier or bailee.

CLAUSE 29. *Notice of loss.* In the event of loss which may give rise to a claim under this policy, prompt notice must be given to the Underwriting Agent.

CLAUSE 30. *Rules and regulations.* This policy is subject to all rules and regulations pertaining hereto which may now or hereafter from time to time be published in the FEDERAL REGISTER.

CLAUSE 31. *Cancellation.* This policy may be canceled at any time upon 15 days written or telegraphic notice to or by the Assured or 15 days subsequent to the publication of a notice of cancellation in the FEDERAL REGISTER or at such other date as may be mutually agreed: Provided, however, that no such cancellation shall terminate this policy with respect to any shipments which have become a risk under the terms hereof prior to the effective date of such notice.

CLAUSE 32. *Amendments.* This policy may be amended by endorsement attached hereto and executed on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation, by a duly authorized Underwriting Agent pursuant to prior written or telegraphic instructions from the Maritime Administrator or by publication of an amendment to the Open Cargo Policy form in the FEDERAL REGISTER. In the latter event such amendment shall become effective upon the date of the publication of the amendment in the FEDERAL REGISTER or upon such date as may be specified therein: *Provided, however,* That no amendment which is restrictive in effect upon an Assured shall become effective prior to 48 hours after the date of such publication and no such restrictive amendment shall affect any shipments which shall have attached hereunder prior to the effective date of such amendment. In the event that the Assured is unwilling to accept any amendment to this policy, he shall have the option of terminating this policy as of the effective date of such amendment upon written or telegraphic notice to the Maritime Administrator through the Underwriting Agent prior to such effective date.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this policy, but this policy shall not be valid unless countersigned by an authorized Underwriting Agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary of Transportation.

____

(Maritime Administrator)

The Underwriting Agent does not, by countersigning and issuing this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this policy, but acts solely under the power conveyed to the Underwriting Agent by an agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned this —— day of ———19—.

____

(Underwriting agent)

By ————————————

Address of Underwriting Agent for receiving notices of loss ————————.

§ 308.518 Standard optional endorsement No. 1, Form MA–300–A.

Standard Optional Endorsement No. 1 limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. An Assured may elect to have his Open Cargo Policy endorsed with Standard Optional Endorsement No. 1 applicable (a) on all shipments, or (b) on all outward shipments, or (c) on all inward shipments, or (d) on named commodities except goods sold by the Assured prior to loading on board the overseas vessel and shipped for the account and at the risk of third persons other than a branch subsidiary or affiliate of the Assured. When an Assured has elected to have Standard Optional Endorsement No. 1 made applicable to certain named commodities he may not change to a different basis of valuation for those commodities until after he has given ninety (90) days written notice to the Maritime Administrator through the Underwriting Agent of his election to make the change. Application for Standard Optional Endorsement No. 1 may be made to the Underwriting Agent who is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 1:

Form MA-300-A (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

STANDARD OPTIONAL ENDORSEMENT NO. 1

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC ——, issued to: ————. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Limits on amount payable for loss.* Clause 9 of the Open Cargo Policy is hereby deleted and the following substituted therefor:

CLAUSE 9. *Limits on amount payable for loss*—(a) *Actual pecuniary loss.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profits arising out of the insured venture. If claim is filed by the Assured named herein on behalf of any other person at interest, the declaration shall include a statement that the amount collectible does not exceed the amount which would have been collectible by the Assured named herein if at the time of the loss the Assured named herein had full interest in the insured goods. If this policy is issued to an agent for account of a principal named herein, both the agent and the named principal shall be required to sign the declaration provided for in this Clause.

(b) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declaration required by paragraph (a) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(c) *Criminal code.* The declarations required to be filed pursuant to this Clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after ————:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

§ 308.519 Standard optional endorsement No. 2, Form MA-300-B.

Standard Optional Endorsement No. 2 amends the policy to cover shipments made to the Assured or shipped by the Assured as agent for the account and risk of a principal. Application for Standard Optional Endorsement No. 2 may be made to the underwriting agent, who is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 2:

Form MA-300-B (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

STANDARD OPTIONAL ENDORSEMENT NO. 2

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC ——, issued to: ———. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Agent for principal.* This policy covers all shipments otherwise coming within the scope of this policy but shipped to or consigned to the Assured, or shipped by the Assured, and for the account and risk of ——— (herein called the "Principal"). The Assured warrants that he is a duly authorized agent of the Principal for the purposes of the insured transaction. The Assured warrants that closing reports as provided for by the terms of this policy and by the terms of General Order 75 of the Maritime Administration and supplements thereto will be filed by him with respect to all shipments insured hereunder, and subject to all the conditions and regulations of the Maritime Administrator relating to such reports. In the event of loss, any sums payable under the terms of this policy shall be paid to the order of the Principal. In the event of loss, the Assured acting as agent for the Principal shall file the declarations called for by the terms of this policy, but if the Principal is domiciled in the United States of America, or any possessions or territories thereof as defined in Maritime Administration General Order 75, or any amendments thereto, or maintains regular office or place of business therein, the Principal shall be required to file a similar declaration. In the event of loss the amount collectible hereunder shall not exceed the amount which would have been collectible by the Principal if he were named as the Assured hereunder.

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after ———:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessels on or after said date.

§ 308.520 Standard optional endorsement No. 3, Form MA-300-C.

Standard Optional Endorsement No. 3 amends the policy to include shipments of diamonds for industrial purposes, or rubies or sapphires, natural or synthetic, used for instruments or watch jewels imported to the Continental United States (excluding Alaska). Application for Standard Optional Endorsement No. 3 may be made to the Underwriting Agent who shall transmit it to the Maritime Administrator for approval or disapproval of the issuance of the endorsement. The following is the Standard Form of Optional Endorsement No. 3:

Form MA-300-C (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

STANDARD OPTIONAL ENDORSEMENT NO. 3

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC ——, issued to: ———. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Precious stones.* Shipments of ———, to the Continental United States (excluding Alaska) are hereby covered, subject to all the terms and conditions of this policy not in conflict herewith. It is warranted by the Assured that the Underwriter shall not be liable for more than two hundred fifty thousand ($250,000) dollars in any event by loss or damage in respect to shipments by any one vessel under the terms of this endorsement. It is further warranted by the Assured that no shipments will attach hereunder until a qualified officer of the overseas vessel has receipted for the goods covered by this endorsement by acknowledging deposit of the same in the safe or strong room of the carrying vessel.

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after ———:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessels on or after said date.

§ 308.521 Application for open cargo policy, Form MA-301.

The following is the standard form of application for a War Risk Open Cargo Policy:

Form MA-301 (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

APPLICATION FOR WAR RISK OPEN CARGO POLICY

Application is made for a War Risk Open Cargo Policy of insurance in the standard form prescribed in section 308.517 of General Order 75 of the Maritime Administration, pursuant to title XII, Merchant Marine Act, 1936, as amended, and in accordance with all provisions of law and subject to all limitations thereof:

1. *Assured.* Assured to be: ————(Name) ———(Number) ———(Street) ——— (City) ———(Zone) ————(County) —————(State).

2. *Loss payable.* Loss, if any, to be payable in funds current in the United States of America to the order of the Assured.

3. *Goods insured.* Insurance to cover all shipments of lawful goods or merchandise consisting principally of ——— which come within one or more of the following categories, as required by section 1203(b) of the Merchant Marine Act, 1936, as amended:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessel, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

Applicant requests that Optional Endorsement No. 3 be attached to the policy. Yes ☐ No ☐. If "yes" is checked state the reasons for your request and designate the goods to be covered by the endorsement. (The endorsement will not be issued without the written approval of the Maritime Administrator.)

4. *Insurable interest.* To cover all shipments as indicated below by a check made in the appropriate square:

(a) *By assured.* Shipped or consigned to or by, the Assured for his account and risk. Yes ☐. No ☐.

(b) *By others for assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured. Yes ☐ No ☐.

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessels (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge will be received by the Assured from the Purchaser prior to loading of the goods on board the overseas vessel. Y[illegible] ☐. No ☐.

(d) *Sold after attachment o*[illegible] Shipped to, by, or at the direction o[illegible] Assured and sold by the Assured subsequent to the attachment of risk under the policy on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods. Yes ☐. No ☐.

(e) *Agent for principal.* Shipped to or consigned to the Assured, or shipped by the Assured as Agent for the Account and risk of (Name) ———(Number) ———(Street) ———(City) ——— (Zone) ———(County) ———(State) as Principal. Applicant warrants that he is a duly authorized agent of the Principal for the purpose of the insured transaction, and that closing reports as provided for by Clause 19 of the policy and by the terms of General Order 75 of the Maritime Administration and amendments thereof will be filed by him with respect to all shipments insured under the policy. Applicant requests that Standard Optional Endorsement No. 2 be attached to the policy. Yes ☐. No ☐.

5. *Attachment.* To attach, as provided in Clause 13 of the standard form of policy, on all shipments made on or after ——— (which shall not be earlier than the date of the completion of the requirements for the issuance of the policy):

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

6. *Conveyance.* By overseas vessels and connection conveyances.

7. *Voyages covered.* At and from ——to ——.

8. *Valuation.* Goods insured under the policy shall be valued at ———. Applicant requests that Standard Optional Endorsement No. 1 to be attached to the policy. Yes ☐. No ☐.

9. *Rates of premium.* The rates of premium shall be determined by the Maritime Administrator.

10. *Security for payment of premium.* This application is accompanied by (strike out inapplicable provisions):

(a) Letter of transmittal for a Collateral Deposit Fund with check or United States Government Bonds for $———.

(b) Surety Bond A, executed by the applicant as principal and ——— (surety company) as surety for $———. Dated:———, 19—.

———————————
(Applicant)
By:———————————
(Title)

This application must be accompanied by either (a) letter of transmittal for a Collateral Deposit Fund with accompanying check, or United States Government Bonds, or (b) Surety Bond A executed by the Assured as Principal and by the Surety, complying in either case with all applicable provisions of Maritime Administration General Order 75, and supplements thereto.

§ 308.522 Collateral deposit fund, letter of transmittal, Form MA–302.

The following is the standard form of letter of transmittal for use in establishing a collateral deposit fund:

Form MA–302 (7–54)

COLLATERAL DEPOSIT FUND

Transmittal Letter

Policy No. WROC———.
Amount Enclosed $———.
To: Maritime Administrator,
c/o ———, Underwriting Agent.

Enclosed herewith is *check drawn to the order of the "Maritime Adm.—Transportation" or *United States Government Bond in the above sum to be held by the Maritime Administrator as a collateral deposit fund under the above numbered Open Cargo Policy pursuant to all of the terms and conditions of said policy, and such additional conditions and regulations as may be promulgated from time to time by the Maritime Administrator and published by the Maritime Administrator in the FEDERAL REGISTER as provided in said policy.

Dated: ———

———————————
(Assured)
By———————————
(Title)

Received on ———(date), and collateral sent by registered mail to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, DC 20590.

———————————
(Underwriting Agent)
By:———————————

*Strike out inapplicable words.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

§ 308.523 Application for revision of open cargo policy, Form MA–303.

An application for the revision of an Open Cargo Policy must be filed in duplicate with the Underwriting Agent on the following form:

Form MA–303 (7–54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

APPLICATION FOR REVISION OF OPEN CARGO POLICY

The Assured hereby requests that the following change be endorsed upon the War Risk Open Cargo Policy No. WROC —— issued and countersigned by ————————, (Name of Underwriting Agent) effective on all shipments made on or after*———:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents, dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date: ———.

(If this form does not contain sufficient space to set forth the desired changes, attach another sheet of paper hereto, and incorporate the same by reference.)

———————————
(Assured)
———————————
(Address)
By:———————————
———————————
(Title)

(Do not use this space)

---

*This date must not be earlier than the day of receipt of this application by the Underwriting Agent by whom the policy was issued unless otherwise specially authorized in writing by the Maritime Administrator.

§ 308.524 Application for cancellation of open cargo policy, Form MA-304.

The following is the standard form of application for cancellation of an Open Cargo Policy:

Form MA-304 (7-54)

United States of America

Department of Transportation

Maritime Administration

APPLICATION FOR CANCELLATION OF OPEN CARGO POLICY

Please cancel Open Cargo Policy No. WROC —— effective on shipments made on or after ———:**

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

———————————
(Assured)
By:———————————
———————————
(Title)

The original Policy No. WROC—— was received by the Underwriter on ———19—.

———————————
(Underwriting Agent)
By:———————————

**Note: The effective date of this cancellation must be a date not earlier than [illegible] days following the receipt of this application for cancellation as acknowledged by the Underwriting Agent unless otherwise agreed by the Maritime Administration in writing.

§ 308.525 Application for decrease in amount of cash collateral fund, Form MA-305.

The following is the standard form of application for decrease in the amount of the cash collateral deposit fund:

Form MA-305 (7-54)

United States of America

Department of Transportation

Maritime Administration

APPLICATION FOR DECREASE IN AMOUNT OF CASH COLLATERAL FUND

Please decrease the amount of the Collateral Deposit maintained to secure the payment of premiums under Open Cargo Policy No. WROC—— by refunding $——. The Assured agrees that for all purposes except for the actual repayment of the requested refund, payment shall be considered as made at the date that the Underwriting Agent acknowledges receipt of this request.

Date:———

———————————
(Assured)
By:———————————
———————————
(Title)

Receipt is hereby acknowledged of the application for decrease in amount of Collateral Deposit by the sum of —— Dollars ($———), this —— day of ——, 19—. Actual repayment of money will be made according to the terms and conditions of the Open Cargo Policy and applicable regulations.

———————————
(Underwriting Agent)
By:———————————

§ 308.526 Certificate for repayment of decrease of collateral deposit fund, Form MA-306.

The following is the standard form of certificate for repayment of the amount of the decrease of the collateral deposit fund:

Form MA-306 (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF

MARITIME ADMINISTRATION

CERTIFICATE FOR REPAYMENT OF DECREASE OF COLLATERAL DEPOSIT FUND

——————(Name of person certifying), certifies under the penalties of perjury that:

(He) (She) is an officer, to wit: ——— (Title) of the ——————(Name of Corporation or company), insured under Open Cargo Policy No. WROC ——

or*

(He) (She) is the assured named in Open Cargo Policy No. WROC —— and is familiar with all matters pertaining thereto.

That the refund of —— Dollars ($——) was effected as of the —— day of ———, 19–, but has not yet been repaid; that all premiums accrued by reason of the attachment of all known or reported risks covered under Open Cargo Policy No. WROC — up to the time of the receipt of Surety Bond B on the — day of ———, 19–, by ———, the Underwriting Agent, have been paid in full and the unpaid premium accrued by reason of the attachment of any and all known or reported risks since said date and at the date of this certificate is not greater than —— Dollars ($——), the amount remaining on deposit if payment is made as herein requested.

Date: ———.

——————————

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

*Strike out inapplicable part.

§ 308.527 Application for return premium, Form MA-307.

An application for the return of premium must be filed in duplicate with the Underwriting Agent in the following form:

Form MA-307 (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

APPLICATION FOR RETURN PREMIUM OPEN CARGO POLICY

Do not fill out this space

Premium paid ——————
Checked by Underwriting Agency ————
Checked by Clearing Organization ————
Approved by:

——————————

Maritime Administrator, Acting for the Secretary of Transportation of the United States of America.

Assured ——————. Policy Number ——.
Address ——————. Date of Payment —.
Underwriting Agent ——————
Nature of Cargo ——————

Insurance Declared

Quantity (tons, barrels, bales, etc.)	Amount of insurance	Rate	Premium
Total			
	Insurance at Risk		
Total			

Return Premium ———.

Remarks: ——————. Application is hereby made for return premium as set forth above.

Date: ———.

——————
(Assured)

By: ——————

——————
(Title)

Certificate

——————————(Name of person certifying), certifies under penalties of perjury that:

(He) (She) is an officer, to wit: of the —————— (Name of Corporation or Company), insured under Open Cargo Policy No. ——.

or*

(He) (She) is the Assured named in Open Cargo Policy No. —— and is familiar with all matters pertaining thereto; and that the information set forth in said application is in all respects true and correct and is made to induce the Maritime Administrator to return part or all of the premiums heretofore paid by said Assured to said Maritime Administrator for Open Cargo War Risk Insurance. The application is made with full knowledge that the Maritime Administrator will rely on the information set forth therein.

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

*Strike out inapplicable part.

§ 308.528 Surety Bond A, Form MA-308.

The following is the Standard Form of Surety Bond A to be used by an Assured who elects to post a surety bond as security for payment of the premiums pursuant to Clause 21 of the policy:

Form MA-308 (7-54)

SURETY BOND A

WAR RISK OPEN CARGO POLICY NO. WROC ———

Know all men by these presents, That we ——— of ———, as Principal, and ——— of ———, as Surety, are held and firmly bound unto the United States of America in the sum of ——— Dollars ($———), to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas ———, Principal, under application dated ——— has applied for the issuance of a War Risk Open Cargo Policy by the Maritime Administrator acting for the Secretary of Transportation of the United States of America, and

Whereas, the Maritime Administrator has agreed to accept this bond as a guarantee of the payment of all premiums due and payable under the terms and conditions of the Open Cargo Policy when issued, or endorsements thereto or modifications thereof, whether or not consented to by the Surety.

Now, therefore, if the Principal shall well and truly pay unto the Maritime Administrator acting for the Secretary of Transportation of the United States of America the premiums due under the Policy at the times and in the manner provided therefor in the Policy, then this obligation is to be void; otherwise to remain in full force and effect;

This bond is executed by the Surety, upon the following conditions:

1. If the Principal shall fail to file with the Underwriting Agent of the Maritime Administrator on or before the 25th day of each month during which this bond is in effect, a certified closing report as required by the policy showing the values of all shipments covered under the policy during the preceding calendar month and concurrently therewith pay to the Underwriting Agent the premiums called for by the closing report, then the Underwriting Agent shall so notify the Surety as soon as practicable and, in such event, the Surety shall not be liable for any premiums accruing on risks attaching under the Policy subsequent to the date of such notice.

2. This bond may be terminated by either the Principal or the Surety at any time upon fifteen (15) days written or telegraphic notice to the Maritime Administrator, Washington, DC 20590, but such termination shall not affect the liability of the Principal or the Surety hereunder for premiums on risks attaching under the Policy on or prior to expiration of said fifteen (15) days period.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ——— day of ———, 19—, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

———————
(Principal)
By: ———————
Attest ———————
———————(Surety)
By: ———————
Attest ———————

NOTE: The Maritime Administrator requires the signature by or on behalf of the Assured to appear on this bond.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 33 FR 2944, Feb. 14, 1968; 45 FR 22042, Apr. 3, 1980]

§ 308.529 Surety Bond B, Form MA-309.

The following is the Standard Form of Surety Bond B to be used by an Assured who elects to substitute a surety bond for a collateral deposit fund:

Form MA-309 (7-54)

SURETY BOND B

WAR RISK OPEN CARGO POLICY NO. WROC ———

Know all men by these presents, That we ——— of ———, as Principal, and ——— of ———, as Surety, are held and firmly bound unto the United States of America in the sum of ——— Dollars ($———), to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas the Maritime Administrator has issued and delivered to ———, Principal, on the —— day of ———, 19—, that certain War Risk Open Cargo Policy No. WROC ——, and

Whereas, the Maritime Administrator acting for the Secretary of Transportation of the United States of America has agreed to accept this bond as a guarantee of the payment of all premiums due and payable under the terms, and conditions of said Policy or endorsements thereto or modifications thereof whether or not consented to by the Surety.

Now, therefore, if the Principal shall well and truly pay unto the Maritime Administrator acting for the Secretary of Transportation of the United States of America the premiums due under the said Policy at the times and in the manner provided therefor in the Policy, then this obligation is to be void; otherwise to remain in full force and effect;

This bond is executed by the Surety, upon the following conditions:

1. If the Principal shall fail to file with the Underwriting Agent of the Maritime Administrator on or before the 25th day of each month during which this bond is in effect, a certified closing report as required by the policy showing the values of all shipments covered under the policy during the preceding calendar month and concurrently therewith pay to the Underwriting Agent the premiums called for by the closing report, then the Underwriting Agent shall so notify the Surety as soon as practicable; and, in such event the Surety shall not be liable for any premiums accruing on risks attaching under the Policy subsequent to date of such notice.

2. This bond may be terminated by either the Principal or the Surety at any time upon fifteen (15) days written or telegraphic notice to the Maritime Administrator, Washington, DC 20590, but such termination shall not affect the liability of the Principal and the Surety hereunder for premiums on risks attaching under the Policy on or prior to expiration of said fifteen (15) days period.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this —— day of ———, 19—, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

———————————
(Principal)

By:———————————

Attest:———————.

———————————
(Surety)

By:———————————

Attest:———————.

Note: The Maritime Administrator requires the signature by or on behalf of the Assured to appear on this bond.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

§ 308.530 Letter requesting increase or decrease in amount of surety bond, Form MA-310.

The following is the Standard Form of Letter of Transmittal for use in transmitting to the Underwriting Agent an endorsement increasing or decreasing the amount of the surety bond:

Form MA-310 (7-54)

Letter of Transmittal

INCREASE OR DECREASE OF SURETY BOND

To: Maritime Administrator,
c/o ———, Underwriting Agent.
Re: War Risk Open Cargo Policy No. WROC ——.
Dear Sir:

(Increase)* (decrease) is desired in amount of Surety Bond of ———— Company dated the day of ———, 19—, in accordance with the terms of the endorsement submitted herewith.

———————————
(Assured)

By:———————————

———————————
(Title)

*Strike out inapplicable word.

§ 308.531 Endorsement of surety bond increasing or decreasing amount of coverage, Form MA-311.

The following is the Standard Form of Endorsement to be used in increasing or decreasing the amount of a surety bond:

Form MA-311 (7-54)

SURETY BOND

ENDORSEMENT NO. ——

WAR RISK OPEN CARGO POLICY NO.

WROC ——

To be attached to and form a part of Surety Bond No. —— of the ——— (Surety Company) in the amount of ——— Dollars, ($———).

In consideration of (increase*) (decrease) premium charged for the attached bond, it is understood and agreed as follows:

1. The amount of the attached bond is hereby (increased*) (decreased) from —— Dollars ($——) to —— Dollars ($——) as to such and so many of the premiums required to be paid under the Open Cargo Policy No. —, issued by the Maritime Administrator, acting for the Secretary of Transportation of the United States of America, referred to in the attached bond, as accrued after the day, month, year of the receipt of this endorsement as acknowledged below by an Underwriting Agent for the Maritime Administrator acting for the Secretary of Transportation of the United States of America: Provided, That, regardless of the number of changes made in the amount of the attached bond, no amount carried under the attached bond during any period, whether the original amount or any subsequent amount, shall be cumulative with any amount or amounts carried under the attached bond during any other period or periods.

2. The attached bond shall be subject to all its terms, conditions and limitations except as herein expressly modified.

Signed, sealed and dated the — day of ——— 19—.

____
(Principal)

Attest:——————

By:——————————

——————————(Surety)

Attest:——————
(Title)

By:——————————

Receipt of this endorsement is hereby acknowledged subject to the rules and regulations of the Maritime Administrator, acting for the Secretary of Transportation of the United States of America, this —— day of ———, 19—, and shall become effective according to its terms as of this date.

____
(Underwriting Agent)

By:——————————

§ 308.532 Release of surety bond, Form MA-312.

The following is the Standard Form of Release of Surety bond:

Form MA-312 (7-54)

RELEASE OF SURETY BOND

WAR RISK OPEN CARGO POLICY NO. ———

WROC

Whereas ——— has made application to the Maritime Administrator, acting for the Secretary of Transportation of the United States of America, for the termination of Bond No. —— of the ——— (Surety Company) effective ———— in accordance with Paragraph 2 of the conditions of said bond.

It is hereby understood and agreed that ——— (Surety Company) is relieved of any and all liability under Bond No. —— for premiums or risks attaching after ——.

Dated at —— this —— day of —— 19—.

MARITIME ADMINISTRATOR,
Acting for the Secretary of Transportation.

By:——————————
(Underwriting agent)

By:——————————

§ 308.533 Closing report, Form MA-313.

The following is the Standard Form of Closing Report which must be filed in duplicate with the Underwriting Agent not later than the 25th day of each month:

Budget Bureau No. 41-R1666.1
Approval Expires June 30, 1961

Form MA-313
(7-54)

NOTE: To be filed in duplicate. This report must be certified as provided on the reverse hereof..

U.S. Department of Transportation
Maritime Administration

Monthly Closing Report

Do Not Use This Space.

Check deposited

Rate verified.................

For the month
————, 19—

Date..............................

Premium verified.........

Footings verified.........

Assured...................... Summary posted ....

Agent's No. .... Policy No. .... Closing Report No ..... Receipt No ....

Risk No.	Shipping document		Marks and numbers	Quantity of goods	Type of goods or merchandise	Voyage	Inward shipment arrival date or outward shipment dispatch date	Amount	Rate	Premium	Remarks
	Type	No.									

§ 308.534 Certificate to be attached to closing report, Form MA-313-A.

The following is the Standard Form of Certificate to be attached to the closing report required to be filed each month:

Form MA-313-A (7-54)

CERTIFICATE TO BE ATTACHED TO CLOSING REPORT

WAR RISK OPEN CARGO POLICY NO. WROC ——

————————————(Name of person certifying), certifies under the penalties of perjury that:

(He) (she) is an officer, to wit:———— (Title) of the ————————————(Name of Corporation or Company) insured under Open Cargo Policy No. WROC ——
or**

(He) (she) is the assured named in Open Cargo Policy No. WROC —— and does hereby certify, warrant, represent and affirm on (his*) (her) own behalf and on behalf of said Assured that the (closing reports*) (set of closing reports), to which this certificate pertains, contains in all respects a true, accurate and complete list of all goods covered under said Open Cargo Policy required to be reported on a closing form by the terms and conditions of said Open Cargo Policy for the calendar month ending ———, 19—.

The (closing report*) (set of closing reports) is furnished by the Assured and this certificate is made by the Undersigned pursuant to the terms and conditions of the Policy and is furnished by the Assured and by the Undersigned with full knowledge that the Maritime Administrator acting for the Secretary of Transportation will rely thereon, and with the intent and purpose of inducing the Maritime Administrator to rely thereon.

Date:————————

————————————

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

*Strike out inapplicable word.
**Strike out inapplicable part.

§ 308.535 Certificate to be attached to final closing report, Form MA-313-B.

The following is the Standard Form of Certificate to be attached to the final closing report after cancellation of the policy:

Form MA-313-B (7-54)

CERTIFICATE TO BE ATTACHED TO FINAL CLOSING REPORT

WAR RISK OPEN CARGO POLICY NO. WROC ——

———————————————— (Name of person certifying), certifies under the penalties of perjury that:

(He) (she) is an officer, to wit: ———— (Title) of the ———————— (Name of Corporation or Company) insured under Open Cargo Policy No. WROC
or**

(He) (she) is the Assured named in the Open Cargo Policy No. WROC and does hereby certify, warrant, represent and affirm on (his*) (her) own behalf and on behalf of said Assured that the information in the "Final Closing Report on Cancellation of the Policy," to which this Certificate pertains, contains in all respects a true, accurate and complete list of all shipment of goods covered by Open Cargo Policy No. WROC made at any time which have not previously been reported; that the check tendered in payment of premium with the "Final Closing Report on Cancellation of Policy" pays in full any and all unpaid premium which at any time became due and payable under that Policy.

This certificate is furnished by the Undersigned pursuant to the terms and conditions of the Policy with the intent and the full knowledge of the Undersigned and the Assured that the Maritime Administrator, acting for the Secretary of Transportation of the United States of America, will rely thereon in authorizing the refund of the collateral deposit maintained by the Assured for securing the payment of premium under the Policy.

Date: ——————

————————————

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287)

*Strike out inapplicable word.

**Strike out inapplicable part.

§ 308.536 Declaration where failure to comply with Clause 21 was inadvertent, Form MA-314.

The following is the Standard Form of Declaration to be filed by an Assured if he fails inadvertently to maintain a collateral deposit fund or surety bond in an amount sufficient to meet the requirements of Clause 21 of the Policy:

Form MA-314 (7-54)

DECLARATION WHERE FAILURE TO COMPLY WITH CLAUSE 21 WAS INADVERTENT

WAR RISK OPEN CARGO POLICY NO. WROC ———

—————————————— (Name of person making declaration) declares and certifies under the penalties of perjury that:

(He) (she) is an officer, to wit: ——— (Title) of the ———————— (Name of Corporation or Company) insured under Open Cargo Policy No. WROC —— or*

(He) (she) is the Assured named in the Open Cargo Policy No. WROC —— and is familiar with all matters pertaining thereto.

1. That on the —— day of ——— 19, –, the Assured first had knowledge that the amount of collateral deposited pursuant to the terms of said policy was exceeded by the amount of premium due thereunder, that the amount of collateral deposited pursuant to the terms of said policy on that date was $———; that at the date when the collateral became exceeded by the amount of unpaid premium the collateral was for an amount of $———, and the unpaid premium amounted to $———.

2. That under the following circumstances the Assured became aware for the first time that said collateral was insufficient (explain in detail the manner in which the collateral became exceeded):——————.

3. That to the best of the Assured's information and belief the following shipments were made after the date when the collateral first became exceeded and the Assured honestly and in good faith intended said shipments to be covered under the War Risk Open Cargo Policy No. ——.

4. This declaration is furnished by the Assured in order to comply with the provisions of Clause 21 of War Risk Open Cargo Policy and is made by the Undersigned and is furnished by the Assured with full knowledge that the Maritime Administrator will rely on the statements contained therein and is submitted for the purpose of inducing the Maritime Administrator to rely thereon.

Date:——————

————————————

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

*Strike out inapplicable word.

§ 308.537 Effective date of endorsement.

Every endorsement to an Open Cargo Policy shall be made effective upon a future date to be specified in the endorsement. No endorsement may be made retroactive, unless specially authorized by the Maritime Administrator in writing. Each endorsement shall contain a provision in substantially the following form:

Effective date. This endorsement shall be effective on all shipments made on or after ————:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

III—FACULTATIVE WAR RISK CARGO INSURANCE

§ 308.538 General.

The Maritime Administrator is prepared to provide facultative war risk insurance policies covering any cargoes described in § 308.501 which are designated by an applicant prior to the attachment of risks, if the applicant does not have an Open Cargo Policy issued by the Maritime Administrator, or if he has a shipment which is not covered by his Open Cargo Policy. However, a person with regular shipments is urged to avail himself of the advantages of the automatic coverage of an Open Cargo Policy. The Maritime Administrator reserves the right to decline to quote rates or bind insurance on shipments of cargo that could be covered by an Open Cargo Policy unless the applicant can show to the satisfaction of the Maritime Administrator that the risk is not one of a series of similar risks forming part of a continual flow of business for the applicant. The policy will be in the standard form of War Risk Facultative Cargo Policy, Form MA-316, prescribed in § 308.545. All policies will be issued by Underwriting Agents appointed by the Maritime Administrator. All Underwriting Agents will be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

§ 308.539 Application for a facultative cargo policy.

(a) *Preliminary request.* Application for a Facultative Cargo Policy shall be made by filing a preliminary request in writing (including telegram) with an Underwriting Agent of the Maritime Administration, setting forth the following information:

(1) The name and address of the applicant;

(2) The amount of insurance requested;

(3) The commodity and quantity to be insured;

(4) The voyage to be covered;

(5) The name of the vessel upon which the cargo will be shipped, if known, the name of the steamship line, if known, and the date of shipment, if the applicant is submitting the request to bind war risk in writing; for security reasons, if the applicant is submitting the order to bind war risk insurance by telegram, neither the name of the vessel nor the name of the steamship line nor the anticipated date of sailing, should be mentioned. Mentioning such information in a telegram may result in a denial of insurance to the applicant. Any envelope transmitting a letter containing such information should be marked "confidential."

(b) *Binder.* Before the insurance can be bound, the applicant must provide the Underwriting Agent with a properly prepared binder on Form MA-315 prescribed in § 308.544. The binder must be submitted in duplicate, accompanied by check or Money Order payable to the order of the Maritime Adm.—Transportation" for the full amount of the premium computed on the amount to be insured at the rate set by the Maritime Administrator. Any application for facultative cargo war risk insurance received by an Underwriting Agent later than 4 p.m. (Local War Time) shall be considered the next day's business.

(c) *Optional loss limits clause.* Clause 9 of the standard form of facultative cargo policy, Form MA-316, prescribed in § 308.545, limits the amount payable for loss to (1) the fair market value at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incident thereto, and war risk insurance with respect to the lost or damaged goods, or (2) if it is impossible to determine the fair market value at place and time of attachment of risk, the fair market value at the designated port of arrival on the date of the attachment of the risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods, or (3) if the goods had been purchased prior to loading, the actual amount paid or payable to the seller for the goods less all discounts, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. In lieu of these loss limits, the Assured by so specifying in his application, and the binder may have attached to the policy when issued Standard Optional Endorsement No. 1-A, Form 316, prescribed in § 308.546, which limits the amount payable for loss to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profits arising out of the insured venture.

§ 308.540 Premiums.

(a) *Rates.* Rate Schedules for war risk facultative cargo insurance will be published by the Maritime Administrator from time to time, and may be obtained from an Underwriting Agent. All Rate Schedules are subject to change by the Maritime Administrator without notice. If no rate is published for a voyage on which war risk facultative cargo insurance is available, the Maritime Administrator will name a rate through an Underwriting Agent upon application. Whenever an applicant for war risk facultative cargo insurance receives a definite rate quotation and desires to bind insurance at the quoted rate, an order to bind the insurance in accordance with the procedure set forth in this subpart should be submitted within two business days following the day of quotation accompanied by check or Money Order payable to the order of "Maritime Adm.—Transportation" for the full amount of the premium thereon computed on the amount to be insured at the rate set by the Maritime Administrator, or the quotation will expire. Each cargo war risk insurance policy provided by the Maritime Administrator will be subject to a minimum premium of $———.

(b) *Return premium.* Where goods are short-shipped the amount of insurance may be reduced by an amount computed by applying to the original amount of insurance the proportion which the quantity of merchandise short-shipped (i.e., bales, barrels, tons and other designations of quantity) bears to the total quantity of merchandise originally declared for insurance. Where more than one class of merchandise is insured under one policy (e.g., fuel, oil and gasoline) the reduced amount of insurance must be computed separately on each item. Where the amount of insurance is reduced, the Maritime Administrator will give consideration to requests for proportionate returns of premium. An application for the return of a premium must be submitted to the Underwriting Agent in quadruplicate on Form MA-317, prescribed in § 308.547.

§ 308.541 Issuance of a facultative policy.

(a) *Binder.* The Underwriting Agent is authorized to issue a facultative policy in Form MA-316, prescribed in § 308.545, when there has been presented to him a properly prepared binder on Form MA-315, prescribed in § 308.544, together with the payment of the premium as required, and such policy shall be issued as soon as possible after the binder form has been presented to the Underwriting Agent. Prior to the issuance of the policy, the Underwriting Agent is authorized to accept the risk on behalf of the Maritime Administrator by signing the binder. The Maritime Administrator will provide each Underwriting Agent with a supply of facultative policies which shall not be valid until countersigned by the Underwriting Agent. The Underwriting Agent shall keep a permanent record of all such policies and the Assured to whom the policy is issued.

(b) *Numbering.* Each Facultative Cargo Policy supplied to the Underwriting Agent by the Maritime Administrator shall be numbered by the Maritime Administration before it is supplied to the Underwriting Agent. No two numbers shall be the same. The Underwriting Agent when issuing the policy shall add at the end of the Policy number the agency number assigned to that Underwriting Agent, and where policies are issued by more than one office of an Underwriting Agent the issuing office shall also be identified in the policy number. For example, the policies issued by an office in New York will be designated "NY" and policies issued in San Francisco will be designated by "SF" prefixed to the Underwriting Agent's agency number.

§ 308.542 Warranty re thirty-day shipments.

If, after an effective binding of war risk insurance on a shipment of cargo, the assured believes that it will be impossible to comply with the warranty requiring the goods to be shipped and in transit within thirty days from the effective date of binding, such an assured may apply to the Maritime Administrator, through the Underwriting Agent, to modify the warranty. If the Maritime Administrator is satisfied that an extension of time within which the goods are warranted to be shipped and in transit should be granted, he will do so, but additional premium may be charged in the discretion of the Maritime Administrator.

§ 308.543 Cancellation.

Facultative war risk insurance is not subject to cancellation by the Assured unless the goods are not shipped within thirty days following the effective date of binding, and then only if the policy is returned for cancellation.

§ 308.544 Facultative binder, Form MA-315.

The following is the standard form of War Risk Facultative Cargo Binder, which must be filled in by the applicant and submitted, in duplicate, to an Underwriting Agent before the insurance can be bound:

Form MA-315 (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

WAR RISK FACULTATIVE CARGO BINDER NO. WRFC ———

Amount Insured ———. Date ———.
Rate ———%.
Premium $———.

In consideration of a premium as above, the United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation, insures, in accordance with applicable provisions of law, and the terms and provisions of the standard form of War Risk Facultative Cargo Policy, Form MA-316, prescribed in section 308.545 of Maritime Administration General Order 75, published in the FEDERAL REGISTER on ———, 19—, (—FR—): ——— (Assured) ——————————— Upon lawful goods or merchandise consisting of ——— which come within one or more of the following categories, as required by section 1203(b) of the Merchant Marine Act, 1936, as amended, Public Law 763-81st Congress (herein called the "Act"):

(a) Shipped or to be shipped on any American vessel as defined in section 1201 (a) of the act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the National defense or the national economy of the United States, when so engaged;

In the sum of ——— Dollars. Per the vessel called the ——————— (If vessel not known, specify steamship line, if known). Voyage from port of ——— to port of———. Warranted goods shipped and in transit on or before thirty (30) days from effective date of the binding of this risk.

Standard Optional Endorsement No. 1-A (is) (is not) desired.

Any loss payable hereunder shall be payable in funds current in the United States to the order of the Assured upon surrender of this Binder and Policy (if issued) thirty (30) days after full proofs of loss and proofs of interest have been filed with the Underwriting Agent of the Maritime Administrator, acting for the Secretary of Transportation, by whom this binder was issued.

It is (known) (anticipated) that the goods described herein (have been) (will be) shipped from ——— on ———.

(For Marks, Numbers, other Identification and Special Conditions.)

———————————

(Assured)

By:———————————

Receipt of $——— covering insurance premium under above binder is hereby acknowledged:

Accepted on behalf of the Maritime Administrator, acting for the Secretary of Transportation of the United States of America.

———————————

(Underwriting Agent)

By:———————————

Underwriting Agent's Agency Number —.

The Underwriting Agent does not, by signing this binder or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this binder, but act solely under the power conveyed to the Underwriting Agent by an agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

NOTE: Binder forms must be printed, typewritten, or mimeographed and submitted in duplicate to the Underwriting Agent, who will retain one copy.

§ 308.545 Facultative cargo policy, Form MA-316.

The following is the standard form of War Risk Facultative Cargo Policy:

Form MA-316 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

WAR RISK FACULTATIVE CARGO POLICY NO. WRFC ———

Amount insured $———. Date ———.
Rate ———%.
Premium $———.

CLAUSE 1. *Assured.* The United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation (herein called the "Underwriter"), in consideration of the premiums as shown above, and in accordance with applicable provisions of law and subject to all limitations thereof, particularly title XII, Merchant Marine Act, 1936, as amended (herein called the "Act"), hereby insures ————(herein called the "Assured") against WAR RISKS ONLY, in accordance with the terms and conditions hereinafter set forth. This policy is issued on behalf of the Underwriter by ———— (herein called the "Underwriting Agent").

CLAUSE 2. *Loss payable.* Loss, if any, payable, in funds current in the United States of America, to the order of the Assured upon surrender of this Policy, thirty days after satisfactory proofs of loss and proofs of interest have been filed with the Underwriting Agent.

CLAUSE 3. *Goods insured.* To attach, as provided in Clauses 5 and 13, upon lawful goods or merchandise consisting of ———— which come within one or more of the following categories, as required by section 1203(b) of the Act:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201(a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between parts in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

CLAUSE 4. *Insurable interest.* To cover shipments:

(a) *By assured.* Shipped or consigned to, or by, the Assured for his account and risk;

(b) *By others for Assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured;

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel;

(d) *Sold after attachment of risk.* Shipped to, by, or at the direction of the Assured and sold by the Assured subsequent to the attachment of risk hereunder on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods.

CLAUSE 5. *Attachment.* To attach, as provided in Clause 13, on shipments made on or before ————————, and warranted that goods will be shipped and in transit on or before said date. Warranted that the goods insured hereunder have not become waterborne on overseas vessel prior to the date of this insurance, or if waterborne are in good safety in port at day and hour of attachment of risk. Any shipment of cargo excluded from coverage by application of this warranty will automatically attach hereunder as of the time of the arrival of the vessel and interest insured at the next intermediate port in good safety.

CLAUSE 6. *Conveyance.* By overseas vessels and connecting conveyances.

CLAUSE 7. *Voyage covered.* At and from ———————— to ————————.

CLAUSE 8. *Valuation.* Goods insured hereunder shall be valued at ————————

CLAUSE 9. *Limits on amount payable for loss*—(a) *Fair market value at commencement of risk.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value of the lost or damaged goods at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(b) *Fair market value at port of arrival.* If it is impossible to determine the fair market value at the place and approximate time of the attachment of risk, as provided in paragraph (a) of this clause, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value at the designated port of arrival on the date of the attachment of risk, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(c) *Purchase price less discount.* If the lost or damaged goods were purchased by the named Assured prior to loading on board the overseas vessel, the Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations provided for in paragraphs (a) and (b) of this clause, stating that the amount claimed does not exceed the actual amount paid or payable to the seller for the goods less all discounts, and plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. If the lost or damaged goods were purchased by a principal for whom the Assured is Agent, the declaration provided for in this paragraph shall be signed by both the agent and the principal.

(d) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury) in lieu of the declaration required by paragraph (a), (b) or (c) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(e) *Criminal Code.* The declaration required to be filed pursuant to this clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

AMERICAN INSTITUTE WAR CLAUSES

Clause 10. *War risks only.* This insurance is only against the risks of capture, seizure, destruction or damage by men-of-war, piracy, takings at sea, arrests, restraints, detainments and other warlike operations and acts of kings, princes and peoples in prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, or civil strife arising therefrom; and including the risks of aerial bombardment, floating or stationary mines and stray or derelict torpedoes, and weapons of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter; but excluding claims for delay, deterioration and/or loss of market, and warranted not to abandon (on any ground other than physical damage to ship or cargo) until after condemnation of the property insured.

Clause 11. *Arrests, restraints.* Warranted free from any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests, restraints or detainments.

Clause 12. *Commandeering.* This insurance does not cover any loss or damage caused by or resulting from any of the following causes:

(a) Commandeering, preemption, requisition or nationalization by government (de facto or otherwise) of the country to or from which the goods are insured.

(b) Seizure or destruction under quarantine or customs regulations.

Clause 13. *Period covered.* (a) The insurance against the risks enumerated in Clause 10, except the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, referred to in Clause 13(b) below, shall not attach to the interest hereby insured or to any part thereof—

(1) Prior to being on board an overseas Vessel (for the purpose of this Clause 13 an overseas Vessel shall be deemed to mean a Vessel carrying the interest from one port or place to another where such voyage involves a sea passage by that Vessel);

(2) After being discharged overside from an overseas vessel at the final port of discharge,

or

after the expiry of fifteen (15) days counting from midnight of the day of arrival of the overseas vessel at the final port of discharge whichever shall first occur;

(3) After expiry of fifteen (15) days from midnight of the day of arrival of the overseas vessel at an intermediate port or place to discharge the interest for on-carriage from that or any other port or place by another overseas vessel, but shall re-attach as the interest is loaded on the on-carrying overseas vessel. During the said period of fifteen (15) days the insurance remains in force whether the interest is awaiting transit or in transit between the overseas vessels.

(b) The insurance against the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged attaches as the interest hereby insured is first loaded on lighter, craft or vessel after leaving the warehouse at point of shipment in transit for the destination declared hereunder, and ceases to attach as the interest is finally landed from the vessel, craft or lighter prior to delivery to warehouse at such destination.

If the contract of affreightment is terminated at a port or place other than the destination named therein such port or place shall be deemed the final port of discharge for the purpose of this Clause.

It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control.

If anything contained in this policy shall be inconsistent with this Clause 13 it shall to the extent of such inconsistency be null and void.

Clause 14. *Deviation.* This insurance shall not be vitiated by deviation, overcarriage, change of voyage, or by any error or unintentional omission in the description of interest, vessel or voyage, provided the same be communicated to the Underwriting Agent as soon as known to the Assured and an additional premium paid if required.

Clause 15. *Sue and labor.* In case of any loss or misfortune, it shall be lawful and necessary to and for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or the Underwriter, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; and to the charges whereof, the Underwriter will contribute according to the rate and quantity of the sum hereby insured.

Clause 16. *General average.* General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or as per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

Clause 17. *Collision.* No claim shall be payable hereunder which arises from collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this paragraph "power" includes any authority maintaining naval, military or air forces in association with a power.

SPECIAL CLAUSES

CLAUSE 18. *Transit interrupted.* If the ordinary course of transit of the goods hereby insured is interrupted or terminated by the shipper, consignees, or Assured or any party acting on their behalf, this insurance shall forthwith terminate unless otherwise specially agreed by the Maritime Administrator.

CLAUSE 19. *Unintentional error.* This insurance shall not be invalidated by any error, or omission which is demonstrated to the satisfaction of the Maritime Administrator to have been inadvertent or unintentional. The Maritime Administrator or his representative duly authorized in writing, may waive strict compliance with any warranty or condition of this insurance to the extent that he may determine that it imposes a hardship on any claimant in good faith hereunder which would not be imposed in connection with a policy issued in accordance with commercial practice in the marine insurance business, and to the extent that he may determine that such waiver is not contrary to the provisions of title XII of the Merchant Marine Act, 1936, as amended, under which the Policy is issued. In any determination as aforesaid the decision of the Maritime Administrator, or his duly authorized representative, shall be conclusive upon all parties thereto.

CLAUSE 20. *Goods excluded.* This policy does not cover shipments of specie, currency, securities, valuable documents, jewelry, precious stones, gold and silver and other precious metals, nor any articles transported by means of ordinary mail or air-mail or registered mail or parcel post.

CLAUSE 21. *Return premium.* No premium will in any case be returned to the Assured except in the event of an error made in the application of a rate or in the computation of a premium, or except in the event the insured goods are not shipped or are short-shipped; notwithstanding the foregoing, whenever goods have been over-insured by reason of an error or otherwise, and such fact is discovered and the material facts and circumstances are presented immediately after discovery of the over-insurance and prior to the time when the overseas vessel reaches the destination port in safety, to the Underwriting Agent, then the Maritime Administrator will give consideration to an application for a return premium and if in his sole discretion the Maritime Administrator is satisfied that the Assured acted in good faith and that the instance is one in which in commercial practice a return premium would be made the Maritime Administrator will grant the appropriate return premium.

CLAUSE 22. *Partial loss.* In case of partial loss by perils insured against, the proportion of loss shall be determined by a separation of the damaged portion of the insured property from the sound and by an agreed estimate (by survey) of the percentage of damage of such portion: or if such agreement is not practicable, then by public sale of such damaged portion for the account of the owner of the property, and by comparison of the amount so realized with the applicable valuation limit provided in Clause 9.

CLAUSE 23. *Labels clause.* In case of damage affecting labels, capsules or wrappers, the Underwriter, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall the Underwriter be liable for more than the insured value of the damaged merchandise.

CLAUSE 24. *Carrier clause.* Warranted that this insurance shall not inure, directly or indirectly, to the benefit of any carrier or bailee.

CLAUSE 25. *Notice of loss.* In the event of loss which may give rise to a claim under the policy, prompt notice must be given to the Underwriting Agent.

CLAUSE 26. *Rules and regulations.* This policy is subject to all rules and regulations pertaining hereto which may now or hereafter from time to time be published in the FEDERAL REGISTER.

CLAUSE 27. *Cancellation.* This policy may not be cancelled by the Assured unless the goods are not shipped within thirty (30) days following the effective date of binding and then only if the policy is returned to the Underwriting Agent for cancellation.

CLAUSE 28. *Amendments.* This policy may be amended by the binder or by endorsement attached hereto and executed on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation, by a duly authorized Underwriting Agent pursuant to prior written or telegraphic instructions from the Maritime Administrator.

In witness whereof, the Maritime Administrator, acting for the Secretary of Transportation, has signed this policy, but this policy shall not be valid unless countersigned by an authorized Underwriting Agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator,*
acting for the Secretary
of Transportation.

———————————
(Maritime Administrator)

The Underwriting Agent does not, by countersigning and issuing this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Transportation, to issue this Policy, but acts solely under the power conveyed to the Underwriting Agent by an Agreement made with the Maritime Administrator, acting for the Secretary of Transportation.

Countersigned this —— day of ————19—.

———— (Underwriting agent). Address for Underwriting Agent for receiving notices of loss.

By:———————————

———————————

Original and duplicate issued—one of which being accomplished, the other to stand null and void.

§ 308.546 Standard optional endorsement No. 1-A, Form MA-316-A.

Standard Optional Endorsement No. 1-A limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. (Similar provisions for Open Cargo Policies are contained in Standard Optional Endorsement No. 1, Form MA-300-A, prescribed in § 308.518.) Application for Standard Optional Endorsement No. 1-A must be made to the Underwriting Agent at the time application is made for the policy. The Underwriting Agent is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 1-A:

Form MA-316-A (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

STANDARD OPTIONAL ENDORSEMENT NO. 1-A

This endorsement is attached to and made a part of War Risk Facultative Cargo Policy No. WRFC ——, issued to ————. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Limits on amount payable for loss.* Clause 9 of the Facultative Cargo Policy is hereby deleted and the following substituted therefor:

CLAUSE 9. *Limits on amount payable for loss*—(a) *Actual pecuniary loss.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. If claim is filed by the Assured named herein on behalf of any other person at interest, the declaration shall include a statement that the amount collectible does not exceed the amount which would have been collectible by the Assured named herein if at the time of the loss the Assured named herein had full interest in the insured goods. If this policy is issued to an agent for account of a principal named herein, both the agent and the named principal shall be required to sign the declaration.

(b) *Sales price less discount.* In the event of the loss of goods shipped by, to, or at the direction of the Assured and which were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declaration, required by paragraph (a) of this Clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(c) *Criminal code.* The declarations required to be filed pursuant to this Clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C.

1001), or to file a false, fictitious of fraudulent claim against the United States (18 U. S. C. 287).

§ 308.547 Application for return premium, Form MA-317.

An application for the return of premium must be filed in duplicate with the Underwriting Agent in the following form:

Form MA-317 (7-54)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

APPLICATION FOR RETURN PREMIUM FACULTATIVE

Assured ———————. Policy Number ————
Address ————————————————————
Underwriting Agent ————————————
Date of Payment ——————————————
Nature of cargo ———————————————
Date Insurance Bound ——————————

CARGO POLICY

Do not fill out this space

Premium paid ——————————————
Checked by Underwriting Agency ————
Checked by Clearing Organization ————
Approved by:

————————————————————

Maritime Administrator, Acting for the Secretary of Transportation of the United States of America

Insurance Declared

Quantity (tons, barrels, bales, etc.)	Amount of insurance	Rate	Premium
Total			

Insurance at Risk

Total			

Remarks: ————————————————

Application is hereby made for return premium as set forth above.
Date: ——————.

————————————————————
(Assured)
By:————————————
————————————(Title)

Certificate

————————————(Name of person certifying) certifies under penalties of perjury that:

(He) (She) is an officer, to wit: ———— (Title) of the ————————(Name of Corporation or Company), insured under Facultative Cargo Policy No. ————

or*

(He) (She) is the Assured named in Facultative Cargo Policy No. and is familiar with all matters pertaining thereto; and that the information set forth in said application is in all respects true and correct and is made to induce the Maritime Administrator to return part or all of the premiums heretofore paid by said Assured to said Maritime Administrator for Facultative Cargo War Risk Insurance. The application is made with full knowledge that the Maritime Administrator will rely on the information set forth therein.

————————————————

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

Policy hereby endorsed in accordance with foregoing and voucher cleared by Maritime Administration.

Date:——————.
Maritime Administrator,
Acting for the Secretary
of Transportation.
By:————————————
(Underwriting Agent)
By:————————————

IV—GENERAL

§ 308.548 Standard form of underwriting agency agreement for cargo; Form MA-318.

The following is the standard form of underwriting agency agreement applicable with respect to agreements made after June 7, 1961, which will be executed by the Maritime Administrator and domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies as Underwriting Agents to issue war risk cargo policies in accordance with the provision of the agreement and this subpart:

*Strike out inapplicable part.

Form MA-318 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

UNDERWRITING AGENCY AGREEMENT FOR CARGO

This Agreement, made and entered into this —— day of ————, 19—, by and between the United States of America (herein called the "United States"), acting by the Secretary of Transportation (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and ———— a corporation organized and existing under the laws of ——— and duly authorized to do a marine insurance business in a State of the United States, having an office for the transaction of business at ——— (herein called the "Underwriting Agent").

Witnesseth:

Whereas, pursuant to title XII of the Merchant Marine Act, 1936, as amended (herein called the "Act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his Underwriting Agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by title XII of the Act (Section 8.01, subsection 3, of Department Order No. 117 (Revised), published in the FEDERAL REGISTER July 21, 1960, 25 FR 6934); and

Whereas, the Administrator has determined to employ the Underwriting Agent as an underwriting agent in providing war risk cargo insurance as set forth in section 1203 (b) of the Act upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions herein set forth, the parties hereto agree as follows:

1. *Appointment of agent.* The Administrator hereby authorizes the Underwriting Agent, as an agent acting on behalf of the Administrator and not as an independent contractor, to utilize its offices and facilities to make available the insurance which the Secretary is authorized to provide pursuant to Section 1203(b) of the Act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time to the Underwriting Agent by the Administrator directly or through any clearing agency appointed by the Administrator. The Underwriting Agent hereby agrees to utilize its offices and facilities to make such insurance available, as agent for the Administrator, and to perform the functions hereinafter provided for to the best of its ability. The Underwriting Agent may act through its home office, branch offices or agencies which are authorized to write insurance on its behalf.

2. *Duties of agent.* The duties of the Underwriting Agent shall be as follows:

(a) *Receive applications and issue binders and policies.* The Underwriting Agent shall receive applications for insurance, covering the class or classes of property and subject to the rates and conditions specified by the Administrator upon forms prescribed by the Administrator. After determining that the applications have been submitted in complete and proper form and are accompanied by remittances in the amount of the premiums required for the insurance applied for, the Underwriting Agent shall countersign binders or policies of insurance, or both binders and policies of insurance, subject to the rules, rates, terms and conditions specified by the Administrator on forms prescribed by the Administrator. The insurer under such policies shall be the United States.

(b) *Keep records.* The Underwriting Agent shall keep a full and complete record of all applications, binders, and policies, and shall also record all premiums, charges, collateral deposit funds and surety bonds required by the terms of the binders and policies, so that a record may be available at all times to the Administrator, both as to all applications received and all binders and policies issued, and as to all collateral deposit funds or surety bonds provided by the assured in connection with such binders and policies.

(c) *Receive money and reports.* The Underwriting Agent shall accept monthly Closing Reports from each open cargo policyholder for transmission to the Administrator or to a clearing agency if one is designated by the Administrator. The Underwriting Agent shall also receive checks drawn to the order of "Maritime Adm.—Transportation" for the premiums and charges involved, which checks shall be deposited by the Underwriting Agent in the Federal Reserve Bank nearest to its office, or in such other bank as may be authorized by the Administrator to receive such deposits. The Underwriting Agent shall receive from the bank in which the deposits are made receipts therefor in such number as may be prescribed in instructions to the Underwriting Agent and handle the receipts so received in accordance with such instructions.

(d) *Report monthly*. The Underwriting Agent shall prepare a monthly report, in summary form, of all Closing Reports and binders and policies issued on standard forms to be approved by the Administrator and transmit them, together with supporting Closing Reports received from Open Cargo policyholders and receipts for deposits made as above provided, to the Administrator or to a clearing agency if one is designated by the Administrator.

(e) *Other reports*. The Underwriting Agent shall prepare and transmit such other reports as may be required by the Administrator.

(f) *Process claims for return premiums*. The Underwriting Agent shall receive from holders of policies issued by such Underwriting Agent any claims for return premiums on a standard form prescribed by the Administrator and shall certify thereon, if such is the fact, that the amounts with respect to which such return is claimed were previously paid and were included in closing reports submitted to the Administrator and that based upon the statements included in such application by the assured the return premium applied for is payable in accordance with the regulations of the Administrator. Such applications and certifications shall be transmitted promptly to the Administrator or to a clearing agency if one is designated by the Administrator.

(g) *Process claims for losses*. The Underwriting Agent shall receive reports of losses, prepare adjustments and vouchers, and other data, required by the Administrator, and submit the same with its recommendation as to whether claims are in order for settlement to the Administrator or to a clearing agency if one is designated by the Administrator.

(h) *Help establish advisory committee*. The Underwriting Agent shall, if requested by the Administrator, cooperate with the Administrator and other Underwriting Agents acting in a similar capacity to establish and maintain an advisory underwriting committee to consult with and advise the Administrator in connection with specific underwriting problems, subject to the rules, regulations and instructions of the Administrator, and to establish and maintain such other advisory committees as may be deemed necessary from time to time to safeguard the interests of the Administrator including a loss committee to act as a recipient for information concerning losses and to pass upon any recommendations made by the Underwriting Agent as to losses and payments of claims arising therefrom.

(i) *Cooperate with clearing agency*. The Underwriting Agent shall if requested by the Administrator cooperate with any clearing agency designated by the Administrator to act on behalf of the Administrator in coordinating and facilitating the issuance of insurance pursuant to Section 1203(b) of the Act in accordance with terms and conditions agreed upon between the clearing agency and the Administrator and in accordance with the rules, regulations and instructions issued by the Administrator to the clearing agency.

3. *Compensation*. Subject to paragraph 9 of this Agreement:

(a) *Fair and reasonable*. The Underwriting Agent shall receive for its services such amount as the Administrator and the Underwriting Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Underwriting Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Underwriting Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator, provided, however, that all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by Section 1209(d) of the Act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly*. A statement of the compensation due to the Underwriting Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Underwriting Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Underwriting Agent.

4. *Standard of performance*. In the discharge of its duties and obligations pursuant to this Agreement, the Underwriting Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Underwriting Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Underwriting Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Underwriting Agent assumes full and complete responsibility for the disposition of any funds received by it

or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Underwriting Agent shall be deemed to include a determination by the Underwriting Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Underwriting Agent.

5. *Writing insurance for own account.* It is understood that the Underwriting Agent is or may be engaged in writing for its own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by it hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Underwriting Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. *Books and records*—(a) *Maintained subject to audit.* The Underwriting Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Underwriting Agent, in accordance with regulations made from time to time by the Administrator, and shall at all times be subject to audit and inspection by the Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Underwriting Agent in the performance of and involving transactions related to this Agreement.

7. *Acts only as agent.* The Underwriting Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Underwriting Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement, directly or through any clearing agency appointed by the Administrator. The Underwriting Agent may accompany its signature in all policies countersigned by it hereunder with a statement that, in countersigning such policies, it acts solely under the powers conveyed to it by the Administrator and that it does not thereby warrant its authority to accept applications for insurance or its authority to countersign, nor the authority of the Administrator to issue such policies.

8. *Special circumstances*—(a) *Reimbursement of taxes and fees.* In the event that the Underwriting Agent, after giving notice to the Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any state of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting incomes taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Underwriting Agent hereunder, the Administrator shall reimburse the Underwriting Agent therefor and for any special expense necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Underwriting Agent on account of anything done or not done, by the Underwriting Agent, the Administrator or any clearing agency appointed by him, in connection with the issuance or non-issuance of insurance on behalf of the Administrator or the payment or nonpayment of claims arising thereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations, or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Underwriting Agent be compelled or required to make any payment or incur any expense, the Administrator shall reimburse the Underwriting Agent for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless in connection with the action complained of the Underwriting Agent shall have complied with the standard of performance required hereunder. In any of the foregoing cases the Underwriting Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as and when the Secretary finds that war risk cargo insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. The Underwriting Agent shall not be entitled to receive any compensation or to be reimbursed for any expenditures, as otherwise authorized by paragraph 3 of this Agreement, for services rendered or expenditures incurred prior to the effective date of this Agreement. This Agreement may be terminated, modi-

fied or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Underwriting Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Underwriting Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Underwriting Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member delegate.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
SECRETARY OF TRANSPORTATION,
By: MARITIME ADMINISTRATOR,

————————————
(Maritime Administrator)

Attest:

————————————

————————————
(Underwriting agent)
By: ————————————

Attest:

————————————

Approved as to form:

————————————

(Assistant General Counsel,
Maritime Administration)

I, ————, certify that I am the duly chosen, qualified, and acting Secretary of ————, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that ————, who signed this Agreement on behalf of said corporation, was then the duly qualified ———— of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation.

————————————

[CORPORATE SEAL]

(Where special action of the governing body is not immediately practicable, the following must be signed by the United States Manager, or by the Branch Manager or other similar executive who executes the Agreement.)

I, ————, certify that I am the ———— of ———— the party to this Agreement referred to therein as the Underwriting Agent; that I personally signed this Agreement on behalf of said corporation, under powers given to me by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation.

———————————— L. S.

§ 308.549 Application for appointment of Cargo Underwriting Agent, Form MA-319.

Any domestic insurance company authorized to do a marine insurance business in any State of the United States may apply for appointment as a Cargo Underwriting Agent by sending a letter in the following form to the Maritime Administrator:

Form MA-319 (7-54)

APPLICATION FOR APPOINTMENT OF CARGO UNDERWRITING AGENT

MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION,
Washington, DC 20590

DEAR SIR:

The undersigned, an insurance company duly admitted to transact the business of marine insurance in the following State or States of the United States, hereby applies for appointment as Underwriting Agent of the Maritime Administrator, to execute and issue binders and open and facultative war risk cargo insurance policies on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Transportation, and to perform other functions and duties, as are more specifically set forth in the standard form of underwriting agency agreement prescribed by the Maritime Administrator and printed in the FEDERAL REGISTER of the United States on the ———. In connection with this application, we are transmitting herewith three executed counterparts of an underwriting agency agreement in such standard form.

Dated: ————————.

————————————

(Applicant)

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 45 FR 22042, Apr. 3, 1980]

§ 308.550 Certificate, Form MA-320.

(a) *When used.* Wherever any provision of this subpart or any amendment thereto, requires the Assured to make a declaration or certification under the penalties of perjury and the form of the declaration or certificate is not prescribed, the Assured may execute a certificate on Form MA-320-A, prescribed in paragraph (b) of this section if the Assured is an individual, or on Form MA-320-B, prescribed in paragraph (c) of this section if the Assured is a partnership, or on Form MA-320-C, prescribed in paragraph (d) of this section if the Assured is a corporation.

(b) *Individual, Form MA-320-A.* If the Assured is an individual, a certificate in the following form may be used:

Form MA-320-A (7-54)

CERTIFICATE

I, individually, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying schedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete and are made in good faith for the purpose of inducing the United States of America acting by and through the Maritime Administrator to rely thereon.

————————————

(Assured)

(c) *Partnership, Form MA-320-B.* If the Assured is a partnership, a certificate in the following form may be used:

Form MA-320-B (7-54)

CERTIFICATE

I, individually, and on behalf of the named policyholder, a partnership for whom I declare I have the power to make this certificate, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying schedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete, and are made in good faith for the purpose of inducing the United States of America acting by and through the Maritime Administrator to rely thereon.

————————————

————————————

(Title)

(d) *Corporation, Form MA-320-C.* If the Assured is a corporation, a certificate in the following form may be used:

Form MA-320-C (7-54)

CERTIFICATE

I, individually, and on behalf of the named policyholder, a corporation, for whom I declare I have the power to make this certificate, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying schedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete, and are made in good faith for the purpose of inducing the United States of America, acting by and through the Maritime Administrator, to rely thereon.

____

____
(Title)

§ 308.551 War Risk insurance clearing agency agreement for cargo.

The following is the standard form of clearing agency agreement applicable with respect to agreements made after June 7, 1961, which will be executed by the Maritime Administrator and domestic insurance companies, or groups of domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies or groups of companies as clearing agents:

Form MA-321 (Revised 5-61)

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

CLEARING AGENCY AGREEMENT FOR CARGO

This Agreement, made and entered into this ——— day of 19——, by and between the United States of America (herein called the "United States"), acting by the Secretary of Transportation (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and ———————————, (herein called the "Clearing Agent"), having an office for the transaction of business at ——————, ——————, an association of domestic insurance companies (herein called the "Participating Members"), each of which is authorized to do a marine insurance business in a State of the United States.

WITNESSETH

Whereas, pursuant to title XII of the Merchant Marine Act, 1936, as amended (herein called the "Act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his underwriting agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by title XII of the act (Section 8.01, subsection 3, of Department Order No. 117 (Revised), published in the FEDERAL REGISTER July 21, 1960, 25 FR 6934); and

Whereas, the Administrator is prepared, under the authority of section 1209(d) of the act, to enter into Underwriting Agency Agreements with each of the Participating Members and with other Domestic Companies authorized to do an insurance business in any State of the United States and having facilities similar to the Participating Members (hereinafter collectively called the "Underwriting Agents"), for the purpose of performing certain functions on behalf of the Administrator, including the receipt of applications and countersignature of policies, in connection with the issuance of insurance pursuant to section 1203(b) of the act; and

Whereas, the Administrator has determined to utilize the services and facilities of ——————————, to act as clearing agent to coordinate the issuance of cargo war risk insurance and facilitate the administration of the cargo war risk program by the Administrator;

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. *Appointment of Agent.* The Administrator hereby authorizes the Clearing Agent, as an agent acting on behalf of the Administrator and not as an independent contractor, to utilize its offices and facilities in cooperation with the Underwriting Agents for the purpose of coordinating and facilitating the issuance of cargo war risk insurance pursuant to section 1203(b) of the act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time by the Administrator to the Clearing Agent. The Clearing Agent hereby agrees to utilize its offices and facilities and to perform the functions hereinafter provided for to the best of its ability on behalf of the Administrator. The Clearing Agent may act through and use the facilities of the ———————————— and such other agents as may be approved by the Administrator, to the extent it deems necessary in the performance of its duties hereunder.

2. *Duties of Agent.* The duties of the Clearing Agent shall be as follows:

(a) The Clearing Agent, when and as instructed by the Administrator, shall promptly transmit to the Underwriting Agents all applicable rules, regulations, instructions and information which it receives from the Administrator in connection with the program of insurance authorized by section 1203(b) of the act. The Clearing Agent shall promptly transmit to the Administrator any notice, demand, request or report submitted to it by the Underwriting Agents for transmission to the Administrator, in accordance with this Agreement and the Underwriting Agency Agreements.

(b) The Clearing Agent, when and as required by the Administrator, shall receive reports from the Underwriting Agents, setting forth in summary form, all applications received, policies issued, invalidated, cancelled, reduced or extended, premiums collected and returned and such other information as the Administrator may from time to time request. The Clearing Agent shall prepare and submit to the Administrator, at such regular intervals as the Administrator may direct, a report on a form approved by the Administrator, combining and summarizing the information which shall have been reported to it by the Underwriting Agents as aforesaid and including such other information as may be reasonably required by the Administrator. The Clearing Agent shall from time to time prepare and submit to the Administrator such other reports and information relating to its activities hereunder as the Administrator may from time to time reasonably request.

(c) The Clearing Agent shall receive from the Underwriting Agents reports and claims of losses submitted to said Agents together with the pertinent documents and recommendations relating thereto which the Underwriting Agents shall have prepared and assembled. The Clearing Agent shall promptly transmit all such reports, documents and recommendations to the Administrator, together with any additional information relating to such claims which the Administrator may reasonably require in determining their eligibility for settlement and payment.

(d) The Clearing Agent shall receive from the Underwriting Agents claims submitted to said Agents for return of all or part of premiums previously collected under policies, if any, providing for return premiums, together with the required certifications of said Agents in connection with such claims. The Clearing Agent shall promptly transmit said claims and certifications to the Administrator, together with any further information which the Administrator may reasonably require in connection therewith.

(e) The Clearing Agent shall maintain a complete, separate system of books of records and accounts covering its operations and activities under this Agreement, including a record of all statements, vouchers and other information received by it from the Underwriting Agents. These books of records and accounts shall be the property of the Administrator. They shall be kept available by the Clearing Agent at all times for audit and inspection by duly authorized representatives of the Administrator and by the Comptroller General of the United States or their duly authorized representatives during the period of this Agreement and up to thirty-six (36) months after its termination and thereafter until final settlement of any outstanding claims against the Administrator by holders of policies issued by the Underwriting Agents.

(f) The Clearing Agent shall receive such periodic statements and vouchers of compensation and other payments claimed by the Underwriting Agents as the Underwriting Agents may be required to submit pursuant to the Underwriting Agency Agreements. The Clearing Agent shall consolidate such statements and vouchers into a single monthly statement of compensation claimed by the Underwriting Agents as of the last day of the month covered by such consolidated statement and shall certify thereon that the amounts set forth therein truly and correctly reflect the statements and vouchers received from the Underwriting Agents. The Clearing Agent shall then submit such consolidated statement to the Administrator, who upon his approval thereof, shall promptly forward to the Clearing Agent his check payable to the order of the Clearing Agent in the total amount of such statement as approved by the Administrator. The Clearing Agent shall thereupon make payments to the order of the individual Underwriting Agents in the respective amounts set forth in the statement as approved by the Administrator.

3. *Compensation*—(a) *Fair and reasonable* The Clearing Agent shall receive for its services such amount as the Administrator and the Clearing Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Clearing Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred meaning payments to persons not regularly employed by the Clearing Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator, provided, however, that all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by section 1209(d) of the act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any

person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly.* A statement of the compensation due to the Clearing Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Clearing Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Clearing Agent.

4. *Standard of performance.* In the discharge of its duties and obligations pursuant to this Agreement, the Clearing Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Clearing Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, *Provided, however,* That the Clearing Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Clearing Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Clearing Agent shall be deemed to include a determination by the Clearing Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Clearing Agent.

5. *Writing insurance for own account.* It is understood that the Participating Members of the Association constituting the Clearing Agent are or may be engaged in writing for their own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by the Clearing Agent hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Clearing Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. *Books and records*—(a) *Maintained subject to audit.* The Clearing Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Clearing Agent or of the Participating Members thereof, in accordance with regulations made from time to time by the Administrator, and shall at all times be subject to audit and inspection by the Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Clearing Agent or of the Participating Members thereof in the performance of and involving transactions related to this Agreement.

7. *Act only as agent.* The Clearing Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Clearing Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement.

8. *Special circumstances*—(a) *Reimbursement of taxes and fees.* In the event that the Clearing Agent or any Participating Member or Members thereof, after giving notice to the Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any State of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting income taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Clearing Agent hereunder, the Administrator shall reimburse the Clearing Agent and any Participating Member or Members therefor and for any special expenses necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Clearing Agent or any Participating Member or Members thereof on account of anything done or not done, by the Clearing Agent or any Participating Member or Members thereof or the Administrator, in connection with the issuance or non-issuance or cancellation of insurance on behalf of the Administrator or the payment or non-payment of claims for loss or return premiums arising thereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations, or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Clearing Agent or any Participating Member or Members thereof be compelled or required to make any payment or incur any expense, the Administrator shall reimburse the Clearing Agent or any Participating Member or Members thereof for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Clearing Agent shall have complied with the standard of performance required thereunder. In any of the foregoing cases, the Clearing Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as of the date of its execution by the Administrator and shall continue in force until terminated. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Clearing Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Clearing Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Clearing Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member or delegate.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

14. *Participating Members*—(a) *Indebted to United States.* The Participating Members of the association constituting the Clearing Agent, severally but not jointly and limited each to its participation therein shall be indebted to the United States for such amounts as the Secretary is entitled to recover from the Clearing Agent in accordance with the foregoing provisions and, in the event of failure to pay on demand, the Secretary may bring an action or actions in any court in the United States to recover such amount or amounts from the Participating Members, severally but not jointly, on behalf of the United States.

(b) *Change of shares.* Without cancelling this Agreement, the Participating Members of the association constituting the Clearing Agent may, upon not less than ten (10) days' prior written notice to the Administrator, change their share of participation by agreement among themselves, including the termination of the interests of one Participating Member and the assumption of its share by one or more of the other Participating Members or by the admission of other eligible domestic insurance companies to membership in the association. Any such change of apportionment or termination of participation shall not relieve any Participating Member of its obligations in respect to matters which occurred prior to any change or termination of its interest. Unless the Clearing Agent is notified in writing by the Administrator, within ten (10) days after receipt of notice from the Clearing Agent, that the proposed change in participation or termination or assumption is disapproved, such change shall be understood to be acceptable to the Administrator.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

United States of America,
Secretary of Transportation,
By: Maritime Administrator.

____
(Maritime Administrator)

____
(Clearing Agent)

By: __________________

Attest:

____

Attest:

____

Approved as to form:

____

(Assistant General Counsel, Maritime Administration)

I, __________________, certify that I am the duly chosen, qualified, and acting Secretary of __________________, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that __________________, who signed this Agreement on behalf of said association, was then the duly qualified __________________ of said association; that said officer affixed his manual signature to said agreement in his official capacity as said officer for and on behalf of said association by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the lawful powers of this association.

____

§ 308.552 Effective date.

This subpart shall become effective as and when the Maritime Administrator finds that war risk cargo insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

Note: The records specified in §§ 308.8, 308.517, and 308.548 of this part shall be retained until a release is granted by the Maritime Administration, at which time the Maritime Administration will take custody of the records.

[G.O. 75, 2d Rev., 26 FR 4541, May 26, 1961, as amended at 32 FR 17891, Dec. 14, 1967]

PART 309—VALUES FOR WAR RISK INSURANCE

Sec.
309.1 Procedure.
309.2 Definitions.
309.3 Stated valuation.
309.4 Maximum amount insured.
309.5 Condition of vessel.
309.6 Adjustments for condition, equipment, and other considerations.
309.7 Modifications.
309.8 Vessel data forms.
309.101 Amendment of interim binders.

Stores and Supplies

309.201 Purpose.
309.202 Definitions.
309.203 Value at time of loss.
309.204 Proof of loss.

Authority: Secs. 204, 1209, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1289); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973); Maritime Administrative Order 440-3 (December 6, 1973).

Source: 39 FR 30487, Aug. 23, 1974, unless otherwise noted.

§ 309.1 Procedure.

The Ship Valuation Committee, Maritime Administration, shall publish bianually in the notice section of the Federal Register a general notice which shall set forth the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. Such values shall be effective with respect to a six-month period commencing on January 1 and ending on June 30, or a six-month period commencing on July 1 and ending on December 31 of each calendar year; *Provided, however,* That if there is a substantial change in market values during the effective period of a state valuation, the Maritime Administration reserves the right to revise such valuations at any time during such period.

§ 309.2 Definitions.

(a) "Ship Valuation Committee" means the Ship Valuation Committee referred to in Maritime Administrative Order 440-3.

(b) "The date a vessel is built" is the date the vessel is delivered by the shipbuilder.

(c) "The deadweight tonnage" of a vessel means her deadweight capacity established in accordance with normal Summer Freeboard as assigned pursuant to the International Load Line Convention, 1966, and shall be her capacity (in tons of 2,240 pounds) for cargo, fuel, fresh water, spare parts, and stores, but exclusive of permanent ballast.

(d) "The speed of a vessel" means the speed determined in accordance with the formulae provided in Part 246 of this chapter.

(e) "A passenger vessel" is a vessel which carries more than twelve passengers.

§ 309.3 Stated valuation.

A stated valuation represents just compensation for the vessel to which it applies computed by the Ship Valuation Committee in accordance with sections 902(a) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242(a), 1289(a)(2)). The stated valuation of a vessel does not include vessel stores and supplies, which consist of (a) consumable stores, (b) subsistence stores, (c) slop chest, (d) bar stock, and (e) fuel, as defined in Maritime Administration Inventory Book Forms MA-4736, A through K, which will be valued separately.

§ 309.4 Maximum amount insured.

A stated valuation is the maximum amount for which the Maritime Administration will provide war risk hull insurance for damage to or actual or constructive total loss of the vessel to which such valuation applies and for which claims for damage to or actual or constructive total loss of such insured vessel may be adjusted, compromised, settled, adjudged, or paid by the Maritime Administration with respect to insurance attaching during the effective period of such valuation under the standard forms of war risk hull insurance interim binder or policy prescribed by §§ 308.106 and 308.107 of this chapter.

§ 309.5 Condition of vessel.

If the true condition of a vessel is not known, the Ship Valuation Committee, in determining the stated valuation of the vessel, may assume that it is in a condition that would entitle it to the highest classification of the American Bureau of Shipping, or the equivalent if the vessel is a foreign-flag vessel, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard, the United States Public Health Service, and the Federal Communications Commission, with all outstanding requirements and recommendations necessary for retention of class accomplished, without regard to any grace period; and, so far as due diligence can make her so, the vessel is tight, staunch, strong, and well and sufficiently tacked, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service. The stated valuation of a vessel in substandard condition is subject to downward adjustment as provided in § 309.6(a).

§ 309.6 Adjustments for condition, equipment, and other considerations.

(a) *Adjustment for a vessel in substandard condition.* If the Maritime Administration determines that a vessel is in substandard condition from that assumed by the Committee as provided in § 309.5, there shall be subtracted from the stated valuation of such vessel an amount estimated by the Maritime Administration as the cost of putting the vessel in the condition assumed by the Committee when determining its stated valuation.

(b) *Special equipment.* If the depreciated reproduction cost less construction subsidy, if any, of any special equipment of material utility in the handling of cargo or utilization of a vessel, not otherwise taken into account in determining the stated valuation of such vessel, is in excess of $50,000, an amount estimated by the Maritime Administration as the fair and reasonable value of such equipment shall be added to the stated valuation of such vessel.

(c) *Government installations.* A stated valuation determined pursuant to this part shall not include any allowance for any special installations or equipment to the extent that their cost was borne by the United States.

§ 309.7 Modifications.

The Maritime Administration reserves the right to exempt any vessel from the scope of this part, or to amend, modify, or terminate the provisions hereof.

§ 309.8 Vessel data forms.

(a) *To accompany application for insurance.* Each application for war risk insurance, submitted in accordance with § 308.3 of this chapter, shall be accompanied by a completed Form MA-828, Vessel Data. Copies of this form may be obtained from either the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005, or the Director, Office of Marine Insurance (MAR-540) Maritime Administration 400 Seventh Street SW., Washington, DC 20590.

(b) *Modification to vessels.* Revised vessel data shall be submitted on the appropriate form prescribed in paragraph (a) of this section whenever a vessel undergoes a physical change which increases or decreases its value by five percent or more.

(Approved by the Office of Management and Budget under control number 2133-0011)

[39 FR 30487, Aug. 23, 1974, as amended at 47 FR 25330, June 14, 1982; 50 FR 50167, Dec. 9, 1985]

§ 309.101 Amendment of interim binders.

The interim binder for a vessel whose stated valuation is established pursuant to this part shall be deemed to have been amended on the first day of the effective period of such valuation, as provided in the notice publishing such valuation, by inserting in the space provided therefor, or in substitution for any value appearing in such space, the stated valuation of the vessel set forth in such notice. A stated valuation shall apply with respect to insurance attaching during the effective period of such valuation; *Provided, however,* That if there is a substantial change in market values during such period, the Maritime Administration reserves the right to revise the valuations provided for therein at any time during said period; *And provided further,* That the assured shall have the right within 60 days after the date of publication of a stated valuation or within 60 days after the attachment of the insurance under the interim binder to which such valuation applies, whichever is later, to reject such valuation and proceed as authorized by section 1209(a)(2), Merchant Marine Act, 1936, as amended (46 U.S.C. 1289(a)(2)).

STORES AND SUPPLIES

AUTHORITY: Sections 309.201 through 309.204 issued under sec. 204, 49 Stat. 1987, as amended, sec. 1209, 64 Stat. 775, as amended, 70 Stat. 984; 46 U.S.C. 1114, 1289.

SOURCE: Sections 309.201 to 309.204 contained in G.O. 100, 29 FR 2944, Mar. 4, 1964; 29 FR 3706, Mar. 25, 1964, unless otherwise noted.

§ 309.201 Purpose.

It is the purpose of §§ 309.201 through 309.204 to prescribe the method for determining the values of stores and supplies on board a vessel when lost, for which claims for loss will be paid, and to prescribe the procedure for payment of claims for such loss, when stores and supplies are covered under a disbursements clause of a War Risk Hull Insurance Binder or a War Risk Hull Insurance Policy issued by the United States on forms prescribed by §§ 308.106 and 308.107 of this chapter, or when stores and supplies are covered by a War Risk Disbursements Policy issued by the United States pursuant to section 1203(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1283(c)). The vessel values established by §§ 309.1 through 309.8 (General Order 82) do not include any allowance for the loss of stores and supplies, as distinguished from equipment and spare parts which are included in such vessel values.

§ 309.202 Definitions.

Stores and supplies are those articles and commodities used and consumed in the day-to-day operation of a vessel by the operation and maintenance of machinery and equipment; the maintenance of clean and sanitary conditions; the feeding of passengers, officers, and crew; and stocked for the use and convenience of passengers, officers, and crew. Vessel stores and supplies include (a) consumable stores, (b) subsistence stores, (c) slop chest, (d) bar stock, and (e) fuel, as defined in Maritime Administration Inventory Books, Forms MA-4736, A through K.

§ 309.203 Value at time of loss.

The value of unused stores and supplies on board a vessel at the time of loss, and for which claims for loss will be paid equals:

(a) The value of such stores and supplies on board at the completion of the previous voyage, plus

(b) The value of stores and supplies purchased and placed on board the vessel before the commencement of the voyage during which the loss occurred, plus

(c) The value of stores and supplies purchased and placed on board the vessel after the commencement of such voyage, less

(d) That portion of the sum of paragraphs (a), (b), and (c) of this section which was sold, transferred, used or consumed to, but not including, the date of the loss.

§ 309.204 Proof of loss.

Claims for reimbursement for total loss of stores and supplies may be submitted by the owner to the Chief, Division of Insurance, Maritime Administration, Washington, DC 20590, based on one of two alternative methods of proof, as provided in paragraphs (a) and (b) of this section. Owners may use either method for each category of stores and supplies.

(a) *Formula.* In cases where the owner and the Chief, Division of Insurance, Maritime Administration, have agreed, in advance of the loss, upon amounts representing, or the method for determining, the average daily consumption costs of stores and supplies for the owner's vessel, claims for total loss of such stores and supplies may be submitted by the owner on Affidavit in Proof of Claim for the loss of stores and supplies, Exhibit A. In such cases, the value of the consumable stores at time of loss is determined as follows:

(1) The value of consumable stores on board at the time the vessel was ready to sail, determined by multiplying the number of days for which the vessel is stored by the average daily consumption cost in dollars, plus

(2) The cost of consumable stores, if any, purchased in foreign ports for the homeward voyage, less

(3) The average daily consumption cost times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, plus the actual amount of consumable stores transferred or sold. The values of slop chest stores, bar stock and fuel, at the time of loss are determined in the same manner by using the applicable daily consumption costs for such stores. The value of subsistence stores at the time of loss is determined as follows:

(i) The value of subsistence stores on board at the time the vessel was ready to sail, determined by multiplying the agreed cost for one man per day by the number of crew signed on and the number of passengers, if any, and multiplying that product by the number of days for which the vessel is stored, plus

(ii) The cost of subsistence stores, if any, purchased in foreign ports for the homeward voyage, less

(iii) The number of crew signed on and the average number of passengers, if any, times the agreed cost of one man per day times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, plus the actual amount of subsistence stores transferred or sold.

(b) *Verified costs.* In cases where the owner and the Chief, Division of Insurance, Maritime Administration, have not agreed in advance of the loss upon amounts representing, or the method for determining, the average daily consumption costs of Stores and Supplies for the owner's vessel, claims for total loss of such Stores and Supplies must be submitted by the owner on Affidavit in Proof of Claims for the Loss of Stores and Supplies, Exhibit B. In such cases, the value of the consumable stores will be determined as follows:

(1) The value of consumable stores on board the vessel at the time the vessel was ready to sail, determined by certified inventories of the owner of amounts on board the vessel at the termination of the preceding voyage or date of last inventory, less actual consumption to date of sailing, plus a certified statement by the owner of actual additional purchases made from date of termination of the preceding voyage or date or last inventory to date vessel was lost, subject to audit by the Maritime Administration, less

(2) The average daily consumption cost determined by dividing the amount determined as in paragraph (b)(1) of this section by the number of days for which the vessel was stored, times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, plus actual amount of consumable stores transferred or sold.

The values of subsistence stores, slop chest, bar stock, and fuel, at the time of loss are determined in the same manner, supported by certified inventories of the owner and invoices.

EXHIBIT A

AFFIDAVIT IN PROOF OF CLAIM FOR THE LOSS OF UNUSED STORES AND SUPPLIES ON BOARD THE SS ————————

STATE OF
ss:
COUNTY OF

I am the ——— of ———, the Owner of the SS ————, which was lost as a result of enemy action on or about the —— day of ————, ———. I make this affidavit in support of the above-named Owner's claim for the loss of the actual value of the said vessel's unused Stores and Supplies. The statements herein contained are based upon the personal knowledge of deponent or upon the books of records of the Owner or its agent which deponent believes are true and accurate.

(A) "Stores and Supplies", for loss of which claim is being made, are limited to consumable and subsistence stores as defined in Maritime Administration Inventory Manual, Vessel Inventories, Part I, and do not include radio supplies, expendable equipment, scrap, junk and spare parts.[1]

(B) It has been the consistent accounting practice of the Owner to group together Consumable Stores as defined in the Maritime Administration Inventory Manual, Vessel Inventories, Part I, and Expendable Equipment, but the amount herein stated to be the value of consumable stores for the purpose of making this claim does not exceed ———[2] percent of the aggregate of such consumable stores and expendable equipment.[1] I am familiar with the insurance carried on the Stores and Supplies on the SS ————; and, from the effective date of War Risk Insurance Binder No——— Policy No——— issued by the United States of America, which covers the total loss of Stores and Supplies in the amount of $———, to the date of such vessel's loss on ————, there was no war risk insurance on such Stores and Supplies other than that provided by said Binder or Policy.

The period for which the vessel was stored with Stores and Supplies for use on the voyage on which she was lost, beginning with the last day of storing, was ——— days for Consumable Stores, ——— days for Subsistence Stores, ——— days for Slop Chest, ——— days for Bar Stock and ——— days for Fuel. The number of days from the last day of storing to, but not including, the date on which the vessel was lost, was ——— days for Consumable Stores, ——— days for Subsistence Stores, ——— days for Slop Chest, ——— days for Bar Stock and ——— days for Fuel.

I. Consumable (Excluding Subsistence) Stores:[3]

(A) The average daily consumption cost of Consumable Stores for this vessel for the year prior to the voyage on which she was lost was [4] $———.

(B) The figure required for (A) is not readily available, and the average daily cost of Consumable Stores for this vessel for the last calendar year set up on the Owner's books was [4] $———.

The amount of Consumable Stores on board at the time this vessel was ready to sail (the number of days for which the vessel was stored times the average daily consumption cost, as above) was $———.

To this amount is added the actual cost of Consumable Stores purchased in Foreign Ports for the homeward voyage (as per statement attached)[5] $———, making the total amount on board at date of sailing $———.

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[1] Strike out either paragraph (A) or (B).

[2] Insert percentage agreed upon with Chief, Division of Insurance, Maritime Administration.

[3] If the figure needed to fill the blank in paragraph (A) or (B) is not available, the formula cannot be used; the Owner must submit actual inventories and a record of purchases on Affidavit Exhibit B.

[4] Strike out paragraph (A) or (B).

The average daily consumption cost, as above, times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, as above, is $———.

To this amount is added the actual amount of Consumable Stores transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Consumable Stores on board at date of sailing, as above, is $———, which sum is claimed to be the actual value of the vessel's unused Consumable Stores at the time of the loss, according to the best of deponent's knowledge, information and belief.

II. Subsistence Stores:

The amount of Subsistence Stores on board, that is the number of the crew signed on ( ) and the average number of passengers, if any ( ), times the number of days for which the vessel was stored as above ( ), times the applicable factor[6] of cost for one man per day ( ) was $———.

To this amount is added the actual cost of Subsistence Stores purchased in Foreign Ports for the homeward voyage (as per statement attached)[5] $———, making the amount on board on date of sailing $———.

The amount of Subsistence Stores consumed, that is the number of crew signed on ( ) and the average number of passengers, if any ( ) times the number of days between the last day of storing the vessel and the date on which the vessel was lost ( ) times the applicable factor[6] of cost for one man per day was $———.

To this amount is added the actual amount of Subsistence Stores transferred or sold (as per statement attached), $———, making $———, which, subtracted from the amount of Subsistence Stores on board at date of sailing, as above, is $———, which sum is claimed to be the actual value of the unused Subsistence Stores at the time of the loss, according to the best of deponent's knowledge, information and belief.

III. Slop Chest:[7]

(A) The average daily consumption cost of Slop Chest Stores for this vessel for the year prior to the voyage on which she was lost was[8] $———.

(B) The figure required for (A) is not readily available, and the average daily cost of Slop Chest Stores for this vessel for the last calendar year set up on the Owner's books was[8] $———.

The amount of Slop Chest Stores on board at the time this vessel was ready to sail (the number of days for which the vessel was stored times the average daily consumption cost, as above) was $———.

To this amount is added the actual cost of Slop Chest Stores purchased in Foreign Ports for the homeward voyage (as per statement attached)[5] $———, making the total amount on hand at date of sailing $———.

The average daily consumption cost, as above times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, as above, is $———.

To this is added the actual amount of Slop Chest Stores transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Slop Chest Stores on board at date of sailing, as above, is $———, which sum is claimed to be the actual value of the vessel's unsold Slop Chest Stores at the time of the loss according to the best of deponent's knowledge, information and belief.

IV. Bar Stock:[9]

(A) The average daily consumption cost of Bar Stock for this vessel for the year prior to the voyage on which she was lost was[10] $———.

(B) The figure required for (A) is not readily available, and the average daily cost of Bar Stock for this vessel for the last calendar year set up on the Owner's books was[10] $———.

The amount of Bar Stock on board at the time this vessel was ready to sail (the number of days for which the vessel was stored times the average daily consumption cost, as above) was $———.

To this amount is added the actual cost of Bar Stock purchased in Foreign Ports for the homeward voyage (as per statement attached)[5] $———, making the total amount on hand at date of sailing $———.

The average daily consumption cost, as above, times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, as above, is $———.

To this amount is added the actual amount of Bar Stock transferred or sold (as per statement attached) $———, making $——, which, subtracted from the amount of Bar Stock on board at the time of sailing, as above, is $———, which sum is claimed to be the actual value of the vessel's unused Bar Stock at the time of the loss according to the best of deponent's knowledge, information and belief.

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[5] Strike out this sentence if vessel was lost on outward leg of voyage.

[6] The factor of cost per man per day, as prescribed by the Maritime Administration for voyages beginning in 19 , is $———.

[7] If the figure needed to fill the blank in paragraph (A) or (B) is not available, the formula cannot be used; the Owner must submit actual inventories and a record of purchases on Affidavit Exhibit B.

[8] Strike out paragraph (A) or (B).

[9] If the figure needed to fill the blank in paragraph (A) or (B) is not available, the formula cannot be used; the Owner must submit actual inventories and a record of purchases on Affidavit Exhibit B.

[10] Strike out paragraph (A) or (B).

V. Fuel: [11]

(A) The average daily consumption cost of Fuel for this vessel for the year prior to the voyage on which she was lost was [11] $———.

(B) The figure required for (A) is not readily available, and the average daily cost of Fuel for this vessel for the last calendar year set up on the Owner's books was [12] $———.

The amount of Fuel on board at the time this vessel was ready to sail (the number of days for which the vessel was stored times the average daily consumption cost, as above) was $———.

To this amount is added the actual cost of Fuel purchased in Foreign Ports for homeward voyage (as per statement attached) [5] $——, making the total amount on hand at date of sailing $———.

The average daily consumption cost, as above, times the number of days from the date the vessel was ready to sail to, but not including, the date of loss, as above, is $——.

To this amount is added the actual amount of Fuel transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Fuel on board at the time of sailing, as above, is $——, which sum is claimed to be the actual value of the vessel's unused Fuel at the time of the loss according to the best of deponent's knowledge, information and belief.

Unused Consumable Stores, other than—	
Subsistence Stores	$
Subsistence Stores	
Slop Chest	
Bar Stock	
Fuel	
Total	$

By: ————————

Sworn to before me this —— day of ———, 19—.

————————

Notary Public

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[11] If the figure needed to fill the blank in paragraph (A) or (B) is not available, the formula cannot be used; the Owner must submit actual inventories and a record of purchases on Affidavit Exhibit B.

[12] Strike out paragraph (A) or (B).

EXHIBIT B

AFFIDAVIT IN PROOF OF CLAIM FOR THE LOSS OF UNUSED STORES AND SUPPLIES ON BOARD THE SS ————————

STATE OF
ss:
COUNTY OF

I am the ——— of ———, the Owner of the SS ———, which was lost as a result of enemy action on or about the —— day of ———, ——. I make this affidavit in support of the above-named Owner's claim for the loss of the actual value of the said vessel's unused Stores and Supplies. The statements herein contained are based upon the personal knowledge of deponent or upon the books of records of the Owner or its agent which deponent believes are true and accurate.

"Stores and Supplies", for loss of which claim is being made, are limited to consumable and subsistence stores as defined in Maritime Administration Inventory Manual, Vessel Inventories, Part I, and do not include radio supplies, expendable equipment, scrap, junk and spare parts.

I am familiar with the insurance carried on the Stores and Supplies, on the SS ———; and, from the effective date of War Risk Insurance Binder No. —— Policy No. —— issued by the United States of America, which covers the total loss of Stores and Supplies in the amount of $———, to the date of such vessel's loss on ———, there was no war risk insurance on such Stores and Supplies other than that provided by said Binder or Policy.

The period for which the vessel was stored with Stores and Supplies for use on the voyage on which she was lost, beginning with the last day of storing, was —— days for Consumable Stores, —— days for Subsistence Stores, —— days for Slop Chest, —— days for Bar Stock and —— days for Fuel. The number of days from the last day of storing to, but not including, the date on which the vessel was lost, was —— days for Consumable Stores, —— days for Subsistence Stores, —— days for Slop Chest, —— days for Bar Stock and —— days for Fuel.

I. Consumable (excluding Subsistence) Stores:

(1) The value of Consumable Stores on board the vessel at the time the vessel was ready to sail, as shown by the attached certified inventory of amounts on board the vessel at the termination of the preceding voyage or date of last inventory on ————, less actual consumption to date of sailing, amounting to $———, plus the actual additional purchases made for the voyage on which the vessel was lost, as

shown by the attached invoices, amounting to $———, was $———.

(2) The average daily consumption factor of $——— (determined by dividing the amount determined as in (1) by the number of days for which the vessel was stored) times the number of days from the date the vessel was ready to sail to, but not including, the date of loss (   ) is $———.

To this amount is added the actual amount of Consumable Stores transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Consumable Stores on board at the time the vessel was ready to sail, as shown in (1) above, is $———, which sum is claimed to be the actual value of the vessel's unused Consumable Stores at the time of the loss according to the best of deponent's knowledge, information and belief.

II. Subsistence Stores:

(1) The value of Subsistence Stores on board the vessel at the time the vessel was ready to sail, as shown by the attached certified inventory of amounts on board the vessel at the termination of the preceding voyage or date of last inventory on ——— less actual consumption to date of sailing, amounting to $———, plus the actual additional purchases made for the voyage on which the vessel was lost, as shown by the attached invoices, amounting to $———, was $———.

(2) The average daily consumption factor of $——— (as determined by dividing the amount determined as in (1) by the number of days for which the vessel was stored) times the number of days from the date the vessel was ready to sail to, but not including, the date of loss (   ) is $———.

To this amount is added to the actual amount of Subsistence Stores transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Subsistence Stores on board at the time the vessel was ready to sail, as shown in (1) above, is $———, which sum is claimed to be the actual value of the vessel's unused Subsistence Stores at the time of the loss according to the best of deponent's knowledge, information and belief.

III. Slop Chest Stores:

(1) The value of Slop Chest Stores on board the vessel at the time the vessel was ready to sail, as shown by the attached certified inventory of amounts on board the vessel at the termination of the preceding voyage or date of last inventory on ——— less actual consumption to date of sailing, amounting to $———, plus the actual additional purchases made for the voyage on which the vessel was lost, as shown by the attached invoices, amounting to $———, was $———.

(2) The average daily consumption factor of $——— (determined by dividing the amount determined as in (1) by the number of days for which the vessel was stored) times the number of days from the date the vessel was ready to sail to, but not including, the date of loss (   ) is $———.

To this amount is added the actual amount of Slop Chest Stores transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Slop Chest Stores on board at the time the vessel was ready to sail, as shown in (1) above, is $———, which sum is claimed to be the actual value of the vessel's unused Slop Chest Stores at the time of the loss according to the best of deponent's knowledge, information and belief.

IV. Bar Stock:

(1) The value of Bar Stock on board the vessel at the time the vessel was ready to sail, as shown by the attached certified inventory of amounts on board the vessel at the termination of the preceding voyage or date of last inventory on ——— less actual consumption to date of sailing, amounting to $———, plus the actual additional purchases made for the voyage on which the vessel was lost, as shown by the attached invoices, amounting to $———, was $———.

(2) The average daily consumption factor of $——— (determined by dividing the amount determined as in (1) by the number of days for which the vessel was stored) times the number of days from the date the vessel was ready to sail to, but not including, the date of loss (   ) is $———.

To this amount is added the actual amount of Bar Stock transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Bar Stock on board at the time the vessel was ready to sail, as shown in (1) above, is $———, which sum is claimed to be the actual value of the vessel's unused Bar Stock at the time of the loss according to the best of deponent's knowledge, information and belief.

V. Fuel:

(1) The value of Fuel on board the vessel at the time the vessel was ready to sail, as shown by the attached certified inventory of amounts on board the vessel at the termination of the preceding voyage or date of last inventory on ——— less actual consumption to date of sailing, amounting to $———, plus the actual additional purchase made for the voyage on which the vessel was lost, as shown by the attached invoices, amounting to $———, was $———.

(2) The average daily consumptions factor of $——— (determined by dividing the amount determined as in (1) by the number of days for which the vessel was stored) times the number of days from the date the vessel was ready to sail to, but not including, the date of loss (   ) is $———.

To this amount is added the actual amount of Fuel transferred or sold (as per statement attached) $———, making $———, which, subtracted from the amount of Fuel on board at the time the vessel was ready to sail, as shown in (1) above, is $———, which sum is claimed to be the actual value of the vessel's unused Fuel at the time of the loss according to the best of deponent's knowledge, information and belief.

Claim is hereby made for:

Unused Consumable Stores, other than—	
Subsistence Stores	$———
Subsistence Stores	$———
Slop Chest	$———
Bar Stock	$———
Fuel	$———
Total	$———

By: ———————

Sworn to before me this —— day of ————, 19—.

———————

Notary Public

SUBCHAPTER H—TRAINING

PART 310—MERCHANT MARINE TRAINING

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Subpart A—Regulations and Minimum Standards for State, Territorial or Regional Maritime Academies and Colleges

AUTHORITY: Pub. L. 85-672, 72 Stat. 622 (46 U.S.C. 1381-1388) and Pub. L. 96-453, 94 Stat. 1997; Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Dept. of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 46 FR 37694, July 22, 1981, unless otherwise noted.

§ 310.1 Definitions.

For purposes of this Subpart A:

(a) "The 1958 Act" means the Maritime Academy Act of 1958, Pub. L. 85-672.

(b) "Act" means the Maritime Education and Training Act of 1980, Pub. L. 96-453.

(c) "Administration" means the Maritime Administration, United States Department of Transportation.

(d) "Agreement" means an agreement between a State, or Territorial or Regional maritime academy or college and the Maritime Administrator, Department of Transportation as authorized by the 1958 Act or the Act and set forth in § 310.13 of this part.

(e) "Secretary" means Secretary of Transportation.

(f) "Maritime Administrator" means the Maritime Administrator, Department of Transportation.

(g) "Cadet" means cadet enrolled in the United States Maritime Service and in good standing at a State or Territorial or Regional maritime academy or college meeting the requirements of the 1958 Act.

(h) "Commanding Officer" means the Commanding Officer of a training ship furnished by the Administration.

(i) "Deputy" means the Deputy Maritime Administrator, Department of Transportation.

(j) "Maritime Service" means the United States Maritime service.

(k) "Officers" means all officers and faculty employed by a State maritime academy or college.

(l) "Region Director" means the Director of the Administration's region office in which a School is located or in which a training ship is located.

(m) "School" means State or Territorial or Regional maritime academy or college meeting the requirements of the Act.

(n) "Superintendent" means the superintendent or president of a School.

(o) "Supervisor" means the employee of the Administration designated to supervise the Federal Government's interest in a School under the provisions of the Act, an agreement, and this subpart.

(p) "Training ship" means a vessel used for training by a school and furnished by the Administration to a State or Territory, and includes the ship itself and all its equipment, apparel, appliances, machinery boilers, spare and replacement parts and other property contained in it.

(q) "Midshipman" means a student in good standing at a State maritime academy or college who has accepted midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) under the Act.

§ 310.2 Federal assistance.

(a) The Maritime Administrator may enter into agreements with the present or later established schools (not more than one such school in each State or Territory) meeting the requirements of the Act to make annual payments, for not in excess of four (4) years in the case of each such agreement, to be used for the maintenance and support of such Schools. The amount of each such annual payment shall be not less than the amount furnished to such School for its maintenance and support by the State or Territory in which such academy is located or, in the case of a Regional maritime academy an amount equal to the amount furnished to such academy for its maintenance and support by all States or Territories, or both, cooperating to support such School, but shall not exceed $100,000. However, the amount shall not exceed $25,000, if such academy does not meet the requirements of subsection 1304(f)(2) of the Act.

(b) Pursuant to the provisions of section 1304(c) of the Act, The Maritime Administrator, may furnish to any State or Territory of the United States for use as a Training Ship by a school any suitable vessel that is under his or her jurisdiction, obtain such vessel from any department or agency of the United States, or may construct and furnish a suitable vessel, if such vessel is not available.

(c) The Maritime Administrator may pay to any School the amount of the costs of all fuel consumed by a Training Ship furnished under the provisions of section 1304(c)(1) of the Act while such vessel is being used for training purposes by such a School, if such funds have been appropriated and are available for that purpose.

(d) As a condition to receiving any payments or the use of any Training Ship under the provisions of the Act, the school shall comply with the requirements of the Act and this subpart and shall agree in writing to conform to such requirements.

(e) As a further condition to receiving any payments or the use of any Training Ship, a School shall agree that, with respect to the training program for merchant marine officers, consistent with provisions of the Act, the 1958 Act, and the Agreement, it will comply with the following provisions of law and implementing regulations duly promulgated thereunder, to the extent applicable, including, but not limited to: Title VI, Civil Rights Act, 1964 (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6101); the Vocational Rehabilitation Act—section 504 (29 U.S.C. 794); and 15 CFR Part 8. Each school shall give assurances that it will take any and all measures necessary to effectuate compliance.

§ 310.3 Schools and courses.

(a) *Schools with Federal aid.* The following schools are presently operating with Federal aid under the 1958 Act or the Act:

California Maritime Academy
Maine Maritime Academy
Massachusetts Maritime Academy
State University of New York Maritime College
Texas Maritime College of the Texas A&M University at Galveston
The Great Lakes Maritime Academy

(b) *General rules for operation of a School.* (1) The Schools shall maintain adequate berthing, messing and classroom instruction facilities ashore, or have plans to establish same at the earliest possible time, unless prevented from doing so by conditions beyond the control of the School. During a period a school is implementing an approved plan, Cadets may be housed and instructed on a Training Ship. However, the approved plan may include the ongoing use of the training ship as an instructional and laboratory facility and for the berthing of entering class cadets for a period not to exceed six months for purposes of shipboard indoctrination.

(2) The School shall arrange for the Cadet or Midshipman to take the United States Coast Guard original licensing examination prior to the date of graduation.

(3) As a condition to receiving payments of any amount allowable by the 1958 Act and the Act in excess of $25,000 for any year, a School shall agree to admit student residents of other States to the extent of at least ten percent (10%) of each entering class, if such out-of-State students apply for admission and are otherwise qualified for such admission. The calculation of residents of other States shall exclude residents of foreign countries, but shall include residents of Territories and possessions of the United States (including the Commonwealth of Puerto Rico).

(4) Upon the request of the Administration a school shall furnish such reports and estimates as may be required in the preparation of Federal Budget estimates.

(5) State authorities shall prescribe and administer rules and regulations for the internal organization and administration of each School.

(6) The Administration shall have the right to inspect shore base facilities at all reasonable times.

(7) Records pertaining to a School, its officers, crew, Cadets, the Training Ship, and shore base, shall be maintained by each School and shall be available to the Supervisor upon request. A detailed record of applications for admissions, enrollments, reenrollments, absences with or without leave, hospitalizations, determinations of students not in good standing, disenrollments, graduations, and other data concerning cadets and Midshipmen shall be kept by each school for the period of enrollment plus one year. Copies of these records shall be furnished to the Supervisor upon request.

(8) The Administration may include in any pamphlets, brochures or other public information materials an adequate description of each School giving the reader knowledge of the existence of the School, its purposes and where to obtain application forms and further information.

(c) *Curriculum.* (1) The minimum period of training shall be three (3) years. For the Cadets and Midshipmen at the schools located in California, Maine, Massachusetts, New York and Texas at least six (6) months of the total time must be aboard a Training Ship in cruise status. A maximum of two (2) months of training time aboard commercial vessels of not less than 2,500 horsepower may be substituted for two (2) months of the specified cruise time. For the cadets at the Great Lakes Maritime Academy, six (6) months of the time shall be aboard Great Lakes commercial vessels and an additional three (3) months shall be aboard either a Training Ship in a cruise status or Great Lakes commercial vessels while underway. Cadets in training status aboard commercial vessels shall sign on board as cadets and shall pursue their training within the framework of formal sea projects prepared and monitored by their respective Schools.

(2) State authorities shall prescribe and be responsible for the courses of instruction and general system of training and the addition of such reasonable maritime courses as may be prescribed by Federal authorities, subject to approval by the Maritime Administrator. The curriculum as a composite shall, as a minimum, meet the requirements set out in the Federal Curriculum Standards for Merchant Marine Officers Training Program.

(3) Copies of the Federal Curriculum Standards for Merchant Marine Officers Training Program at the State maritime academies may be obtained from the Maritime Administration, Office of Maritime Labor and Training, 400 Seventh Street, SW, Washington, DC 20590.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[46 FR 37694, July 22, 1981, as amended at 49 FR 13365, Apr. 4, 1984]

§ 310.4 Training Ship.

The Administration may furnish a Training Ship, if such is available, to any School. Training Ships which may be designated for use by a School will be delivered to the School at a location determined by the Administration, in condition found to be in class by the American Bureau of Shipping and certificated by the U.S. Coast Guard. If a Training Ship is not available, adequate cruising facilities shall be the responsibility of the State and its School. The furnishing of a Training Ship shall be subject to the following terms and conditions:

(a) *General provisions.* (1) The State, acting through the School shall exercise reasonable care to safeguard the interests of the Administration and avoid (i) injury to any person aboard the Training Ship, and (ii) loss and damage of every nature with respect to the Training Ship. Also, the school shall have reasonable layup procedures during noncruise status of the Training Ship.

(2) Excerpts from log books and reports shall be submitted as directed by the Supervisor.

(3) Initial telegraphic or telephonic reports shall be made promptly to the Supervisor and the appropriate Region Director in the event of an accident causing (i) serious injury to any person, or to the Training Ship, or (ii) damage inflicted by the Training Ship upon any other ship or other property. Such reports shall be followed by complete written details of the occurrence.

(4) The Supervisor shall determine whether or not the berth of the Training Ship at the base in its home port is suitable from the standpoint of safe mooring. When the Training Ship is not on cruise, the Commanding Officer or Superintendent shall keep the Supervisor informed of the location of the Training Ship and any contemplated change of berth.

(5) The following notice shall be posted conspicuously aboard each Training Ship furnished to a State for use by a School:

This training ship is the property of the United States of America. It is furnished to the State of ———— by the Department of Transportation, Maritime Administration, for the purpose of training young men and women to become officers in the merchant marine of the United States. Neither the State, the Commanding Officer, nor any other person has any right, power or authority to create, incur or permit to be imposed upon this vessel, any lien whatever.

(6) No changes requiring U.S. Coast Guard approval shall be made to the Training Ship without the written approval of the Administration.

(7) In the event of the termination of the use of a Training Ship by the State or by the Maritime Administrator, the State shall return to the State base port, the Training Ship and all property whatsoever owned by the Administration. Title to all additions, replacements, and renewals made by the State shall vest in the Administration without charge.

(b) *Termination of use.* The Maritime Administrator may terminate the use of a Training Ship upon such reasonable notice to the State as the circumstances may permit in the judgment of the Maritime Administrator. If use of the Training Ship is terminated by the Maritime Administrator, the Maritime Administrator may:

(1) Substitute another Training Ship;

(2) Require the sharing of a Training Ship by two or more Schools; or

(3) Cooperate with the School in arranging for training time aboard commercial vessels for its Cadets and Midshipmen.

(c) *Property aboard the Training Ship.* The State shall have the complete use of a Training Ship as defined, subject to the following terms and conditions:

(1) All property, or its equivalent furnished by the Administration, shall be returned to the Administration when use of the Training Ship is terminated. The only exceptions are: spare and replacement parts consumed; and losses due to ordinary wear and tear, unavoidable accident and perils of the sea. All other property otherwise lost or destroyed shall be replaced at the expense of the State.

(2) Administration property shall not be permanently removed from the Training Ship to the shore base without the prior written approval of the Supervisor.

(3) The administration shall take inventories of State and Federal property aboard the Training Ship at such times as it deems necessary. The school, at its expense, shall furnish such assistance as may be necessary in taking such inventories.

(d) *Condition Surveys.* Before a Training Ship is released to a School and manned by officers under State control, a condition survey shall be made by duly authorized representatives of the School and the Administration. If the Training Ship is found in order, the School representative shall sign a receipt for the Training Ship. Subsequently, after due notice to the State authorities, a condition survey may be made of the Training Ship whenever deemed advisable by the Administration, and, in any event, upon redelivery of the Training Ship by the State to the Administration.

(e) *Maintenance and repairs.* (1) *Administration payment.* A Training Ship shall be maintained in good repair by the Secretary as provided by the 1958 Act and the Act. Expenses for repairs, changes and alterations, repairs to equipage and replacements of equipage in accordance with the Administration's approved allowance lists for the Training Ship (i.e. authorized under the Act and to the extent that funds are available), shall be borne by the Administration under the following terms and conditions:

(i) When it is necessary to repair or drydock the Training Ship because of damage (except in an emergency, when on foreign cruise), the Commanding Officer or Superintendent shall notify the Supervisor and appropriate Region Director by telephone or telegraph in order to enable a representative of the Region Director, if available, to be present, when the survey of the damage is made.

(ii) Repairs which need not be carried out during the annual overhaul period shall be made by the Cadets or Midshipmen, if possible, under the supervision of the officers. When repair material is required for this purpose, the Commanding Officer or Superintendent shall forward to the Supervisor a list of such material and estimated costs, and a description of the repairs to be carried out by the Cadets or Midshipmen. The Supervisor shall promptly advise the Commanding Officer or Superintendent whether or not such work comes under the heading of repairs, and if procurement of the material is authorized.

(iii) Requisitions covering repairs, renewals, and betterments shall be prepared in quintuplicate by the heads of departments of the Training Ship and submitted by the Commanding Officer or Superintendent to the Supervisor at least forty-five (45) days before the date of the annual overhaul, with one copy to the Region Director.

(iv) The State is authorized to expend not to exceed $5,000 for emergency repairs which become necessary while the Training Ship is on foreign cruise. The Adminstration shall reimburse the State upon submission of vouchers to, and approval by, the Maritime Administrator. To obtain reimbursement for emergency repairs estimated to cost in excess of $5,000, authorization must be obtained by the State from the Supervisor prior to undertaking such repairs. The Commanding Officer shall be responsible for all necessary filings with the United States Customs Service to avoid duties upon all emergency repairs performed outside the United States. If penalties are imposed, for non-filing or improper filing, they shall be solely the responsibility of the State.

(2) *State payment.* Except as otherwise provided in this section, the State shall, at its own expense, accomplish the following:

(i) Undertake usual preventive maintenance of the Training Ship, adhere to minimum levels of preventive maintenance as prescribed by the Administration, and keep the Training Ship clean and painted, above the waterline according to good maritime practices.

(ii) Cause the Training Ship to be fumigated if required by the Administration and forward to the Supervisor a copy of the fumigation certificate.

(iii) Pay for all consumable stores, freshwater and costs incidental to the operation of the Training Ship.

(iv) Pay for fuel of the training ship except that the Administration may assist in paying the cost of fuel consumed on the Training Ship while being used for training purposes if funds are appropriated and available for such purposes.

(f) *Cruises.* The school shall submit the cruise itinerary of the Training Ship including a listing of foreign ports to be visited, for approval of the Supervisor at least sixty (60) days in advance of the date such cruise is scheduled to begin. The Supervisor shall arrange with the Department of State for clearance of the Training Ship to visit foreign ports.

(g) *Hospitalization.* The School shall be responsible for all medical treatment and hospitalization of all persons aboard the Training Ship at all times, including officers and Cadets and Midshipmen. If available, facilities of the United States Public Health Service should be utilized.

(h) *Repatriation and return to home port.* The School shall be responsible for the return to the home port of the Training Ship of all persons, including officers and Cadets and Midshipmen, who originally embarked on a training cruise from a Continental United States port and who are left behind, after the departure of the Training Ship from any port, foreign or domestic, or are to be brought home from the ship at any time or for any reason. The School shall be solely responsible for all expenses of repatriation and return to home port.

§ 310.5 Personnel.

(a) *Selection and appointment of Superintendent and faculty by State authorities.* (1) The State shall select and appoint the Superintendent of a School in accordance with qualifications established by appropriate State authorities. The State shall notify the Maritime Administrator whenever a new Superintendent is appointed and furnished with appropriate background information on the appointee for informational purposes.

(2) The State shall appoint faculty members in disciplines other than engineering and navigation on the basis of the same criteria used in the employment of such personnel in State-supported colleges and universities throughout the State. Faculty members in navigation and engineering courses, including steam and diesel, shall meet appropriate academic and practical experience standards adopted by the school and approved by the Administration.

(b) *Personnel for Training Ships*—(1) *Commanding Officer.* The Commanding Officer shall hold a valid Master's Ocean, Unlimited Tonnage license including Radar Observer endorsement issued by the United States Coast Guard and shall have served at least two (2) years as Master, Chief Officer, Commanding Officer, or Executive Officer either (i) on oceangoing vessels under the authority of said Master's Ocean, Unlimited Tonnage license, or (ii) in the case of sea service as a member of the Uniformed Services of the United States, on ships accepted by the United States Coast Guard as equivalent for qualifying service for issue of a Master's Ocean, Unlimited Tonnage license.

(2) *Chief Engineer.* The Chief Engineer must hold a valid Chief Engineer's (Steam) Ocean, Unlimited Horsepower license, issued by the

United States Coast Guard and have served as Chief Engineer of an oceangoing steamship of comparable horsepower to that of the particular Training Ship.

(3) *Watch Officers.* Both Deck and Engineer Watch Officers in charge of a watch, underway, shall hold valid Ocean, Unlimited Tonnage licenses, issued by the United States Coast Guard, in their particular field.

(4) *Radio Officers.* During each training cruise the Training Ship shall have assigned one or more radio officers holding a valid license issued by the United States Coast Guard, in accordance with its regulations.

(5) *Licensed Engineer.* When a Training Ship boiler is in operation, there shall be a Licensed Engineer qualified to stand the watch aboard at all times.

(c) *Insignia for officers and other School personnel.* The State may furnish insignia for officers and other school personnel, other than officers of the United States Navy, United States Naval Reserve, United States Maritime Service and United States Coast Guard.

(Approved by the Office of Management and Budget under control number 2133-0010)

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[46 FR 37694 July 22, 1981, as amended at 47 FR 25530, June 14, 1982; 49 FR 13365, Apr. 4, 1984]

§ 310.6 Entrance requirements.

(a) *Enrollment prior to April 1, 1982.* A candidate for admission to a school who wishes to be considered for Federal student subsistence payments shall:

(1) Be a citizen of the United States.

(2) Be obligated to (i) complete the Naval Science curriculum (ii) take all necessary and positive steps to obtain a commission as ensign in the United States Naval Reserve, (iii) apply before graduation for such commission, and (iv) accept such commission if offered. A breach of this agreement will result in termination of cadet status and of Federal student subsistence payments, and may lead to legal action for recovery of all past such payments. The requirements of this paragraph shall not apply at The Great Lakes Maritime Academy.

(3) Be obligated to sit for the appropriate licensing examination of the United States Coast Guard.A breach of this agreement will result in termination of cadet status and of Federal student subsistence payments, and may lead to legal action for recovery of all past such payments.

(4) Meet the physical standards specified by the United States Coast Guard for original licensing as a merchant marine officer. The written certification of the Superintendent of the school, based on a physical examination by a doctor, the results of which are on record at the school, that a candidate meets these requirements, will be acceptable to the Administration.

(5) Possess a secondary school education or equivalent, satisfactory for admission as an undergraduate, to colleges or universities under control of the State in which the school is located.

(6) Meet requirements established by the school in regard to such criteria as the individual's secondary school grades, rank in graduating class, aptitude, achievement, and qualities of leadership.

(b) *Enrollment on or after April 1, 1982.* A candidate for admission to a school who wishes to be considered for the Federal student incentive payments shall:

(1) Meet the requirements of paragraphs (a) (1), (4), (5), and (6) of this section.

(2) Be at least seventeen (17) years of age and not have passed the twenty-fifth (25th) birthday on the day of enrollment at a School.

(3) Apply for, be offered, and have accepted midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) and simultaneously have applied and been accepted for Enlisted Reserve status.

(4) Be obligated to complete the naval science curriculum.

[46 FR 37694, July 22, 1981, as amended at 48 FR 24080, May 31, 1983]

§ 310.7 Federal student subsistence allowances and student incentive payments.

(a) *Subsistence allowances.* (1) *Selection and allocation.* In accordance with the Administration's established freshmen subsidy allocation for each School, the school shall select the individuals in its new entering class who will be enrolled in the United States Maritime Service as cadets and start to receive Federal student subsistence payments for uniforms, textbooks and subsistence as provided in the 1958 Act. The freshman subsidy allocations for each school are as follows: California Maritime Academy 99; Maine Maritime Academy 135; Massachusetts Maritime Academy 69; State University of New York Maritime College 200; Great Lakes Maritime Academy 45; and the Texas Maritime College 32. Each student who meets the entrance requirements in § 310.6(a) and applies for enrollment in the United States Maritime Service shall be entitled to consideration for a student subsistence payment at a rate and under the conditions in the 1958 Act. The list identifying the selected students shall be forwarded to the Administration on or before October 31, 1981. The Federal student subsistence payments will be paid to the School while a cadet is in attendance but not in excess of four (4) academic years for any one student.

(2) *Resignation or disenrollment.* There will be no substitution for students removed or dropped from the list of those originally receiving Federal student subsistence payments. Subsidized students who resign or are disenrolled from a school shall not, on subsequent reenrollment, be in a position to reclaim their subsidy status.

(3) *Selection criteria; rate of payment.* The selection of the students to receive such payments shall be made by the School in accordance with criteria established by the School, with the prior approval of the Administration. The rate of Federal student subsistence payments will be determined by the Administration according to the 1958 Act or the Act.

(4) *ROTC enrollment.* Subsidized cadets who make a commitment to an Armed Force Reserve Officer Training Corps will be removed from the Administration subsidy rolls effective on the date they receive funds from a U.S. military service. Should they leave the program for any reason they may not reclaim the Administration subsidy as a cadet.

(5) *Payment procedure.* The Administration shall make the Federal student subsistence payments no more frequently than monthly, directly to the School upon the presentation of a statement containing the names of each Cadet selected by the Academy (within the quotas furnished pursuant to paragraph (a) of this section) to be enrolled in the Maritime Service and to receive the Federal student subsistence payments. For newly selected Cadets in a new entering class, the statement supporting the first voucher for payment shall certify that the cadets have met the entrance requirements in § 310.6.

(6) *Certification procedure.* All vouchers submitted for payment shall contain a certification by the Superintendent that the payment will be used to assist in defraying the cost of the uniforms, textbooks, and subsistence of each Cadet on the basis of the amount to which the cadet is entitled, as reflected by the attached Daily Attendance Report. No cadet shall receive a federal student subsistence payment for any time during which he or she is absent without leave or for absence due to a condition not in line of duty, or when determined by the School to be not in good standing.

(7) *Insufficient appropriations.* If it appears that the amount appropriated by Congress under the Act shall not be sufficient to make payments at the maximum rate, not in excess of $1,200 per academic year per cadet, the Maritime Administrator, after consultation with the Schools, may determine the exact rate to be paid at each School for the remainder of the fiscal year.

(b) *Federal student incentive payments.* (1) *General provisions.* In accordance with the Administration's established subsidy quotas for classes entering after April 1982, each school shall identify to the Administration, no later than February 1 annually, those students who have been selected to receive the student incentive payment authorized by the Act. The students so identified must meet the requirements of § 310.6(b). The Administration shall provide the school with the necessary service obligation agreements. The agreements will be signed by the designated students and returned by the School to the Supervisor and shall become effective when signed by the Supervisor or his or her designee. A copy shall be returned to the School for transmittal to the student. Payments will be issued to these midshipmen in amounts equaling $1,200 for each academic year of attendance. Payments shall commence to accrue on the day each such midshipman begins his or her first term of work at the School. Such payments shall be made quarterly to the midshipman until the completion of his or her course of instruction but in no event for more than four (4) academic years.The School shall submit a quarterly certified Daily Attendance Report listing the names of all designated midshipmen who are entitled to student incentive payments.Midshipmen who do not take all necessary steps to maintain their midshipman status, who lose their midshipman status due to action by the U.S. Navy, or who make the commitment identified in paragraph (a)(4) of this section will have their student incentive payment terminated.

(2) *Temporary reallocation of Federal student incentive payments.* If a School does not have a sufficient number of eligible freshmen to utilize all of its alloted payments, then the unused subsidies may be reallocated on a need basis to academies with eligible students. In the next academic year, each School's subsidy quota for entering students will revert to its original level.

(3) *Form of the Service Obligation Agreement.* The service obligation agreeement shall obligate the midshipman to—

(i) Use the student incentive payment to defray the cost of uniforms, books and subsistence;

(ii) Complete the course of instruction at the School unless sooner separated by the school;

(iii) Take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from a School and to fulfill the requirements for such license not later than three (3) months after graduation;

(iv) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following graduation from a School;

(v) Apply for an appointment as, accept if tendered, and serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least six (6) years following graduation from a School; and

(vi) Serve in the foreign or domestic commerce or both, and the national defense of the United States for at least three (3) years following graduation from a School—

(A) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or Territory of the United States;

(B) As an employee in a United States maritime-related industry, profession, or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that service under paragraph (b)(3)(vi)(A) of this section is not available to such individual;

(C) As a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(D) By combining the services specified in paragraphs (b)(3)(vi)(A), (B) and (C) of this section.

(4) *Marine-related employment.* (i) graduates who intend to claim employment in a United States maritime-related industry, profession of marine science as meeting all or part of the service obligation under paragraph (b)(3)(vi) of this section, shall submit evidence to the Supervisor that they have conscientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence and other information available, shall be consid-

ered in any finding. In view of current and projected employment opportunities, afloat, the Maritime Administrator will grant the shoreside employment option infrequently and only on the basis of comprehensive evidence.

(ii) The Maritime Administrator may consider the positions of operational, management and administrative responsibility in the following marine-related categories under the provisions of paragraph (b)(3)(vi) of this section: Civilian employment in Federal and State agencies related to maritime affairs, steamship companies, stevedoring companies, vessel chartering and operations, cargo terminal operations, naval architecture, shipbuilding and repair, municipal and state port authorities, port development, marine engineering, and tug and barge companies. The above list is not all inclusive and is only intended to serve as a general guide.

(5) *Afloat employment year.* For purposes of the service obligation, a satisfactory year of afloat employment, shall be a number of days employed afloat that is at least equal to the median number of days of seafaring employment under Articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

(6) *Reporting requirement.* The schools shall promptly submit copies of all resignation forms (containing the name, reason, address and telephone number) of juniors and seniors to the Supervisor, to be used for monitoring and enforcement purposes. Each graduate shall submit an employment report form to the Supervisor on or before July 1 of each year following their year of graduation, for three years. In case a deferment has been granted to engage in a graduate course of study, semi-annual reports must be submitted for any extension of the three (3) year obligation period resulting from such deferments. Reporting forms will be distributed by the school and the Supervisor. The reporting requirement for graduates will not become effective until there are State academy graduates subject to this provision, not earlier than 1985. The specific form to be developed by the Maritime Administration shall be subject to approval by the Office of Management and Budget.

(7) *Breach of Agreement.* (i) If the Administration determines that any midshipman who has attended a school for not less than 2 years has failed to complete the course of instruction at a school, the Secretary of the Navy may order that midshipman to active duty in the United States Navy, to serve for a period of time not to exceed 2 years. The Supervisor shall submit the list of those who have breached their agreement to the Chief of Naval Education and Training, Pensacola, Florida 32508.

(ii) If the Administration determines that a graduate of a school has broken his or her agreement under paragraph (3), the Secretary of the Navy may order that individual to active duty to serve a period of time not less than 2 years and not more than the unexpired portion of the service required. The Maritime Administrator, Department of Transportation, in consultation with the Secretaries of Defense and Transportation, shall determine in which service the graduate shall serve such period of time.

(8) *Waivers.* Waivers may be granted in cases where there would be undue hardship or impossibility of performance of the provisions of the agreement due to accident, illiness or other justifiable reason. Applications for waiver will be submitted to the Supervisor.

(9) *Deferments.* In exceptional cases the Administration may grant a deferment of all or part of the service commitment under paragraphs (b)(3)(ii) through (vi) of this section for a period not to exceed two years, only for graduates considered to have superior academic and conduct records while at the school, for the purpose of their entry after graduation into a marine-or maritime-related graduate course of study at an accredited graduate school. However, the Secretary of the department in which the United States Coast Guard is operating and the Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration, which has jurisdiction over such service shall approve any deferment of service as a commissioned officer. Applications for

such deferment shall be made through the Superintendent of Midshipman's school, who shall forward each application together with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Supervisor for appropriate action.

(10) *Determination of Compliance with Service Agreement, Appeals and Review Procedures.* (i) An official of the Administration designated by the Supervisor shall:

(A) Render determinations of whether a student or graduate has breached his or her service agreement;

(B) Grant or deny a deferment of the service obligation under paragraph (b)(9) of this section, except obligations otherwise a part of the graduate Reserve officer status;

(C) Grant or deny a waiver of the requirements of the service agreement in hardship cases.

(ii) A four-person Appeals Review Panel consisting of the Supervisor serving as Chairman, and representatives of the Department of the Navy, the NOAA Corps, and the U.S. Coast Guard, decisions of which shall be final, shall:

(A) Consider appeals of the decisions of the designated official pertaining to a breached agreement in hardship cases;

(B) Consider appeals from denial of deferral by the designated official; and

(C) Consider any issues of procedure or of the merits of cases referred to it by the designated official.

(iii) The procedures for processing determinations of compliance with the service agreement shall be developed by the Supervisor and approved by the Maritime Administrator. Actual notice of such procedures will be given to each student at the time of enrollment in the program.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[46 FR 37694, July 22, 1981, as amended at 48 FR 24080, May 31, 1983; 49 FR 13365, Apr. 4, 1984]

§ 310.8 Leave.

(a) *Enrolled before April 1, 1982.* Limitations on cadet leave, without loss of Federal student subsistence, with the specific limits to be set at the discretion of the Superintendent on an academic year basis, are:

(1) If hospitalized, sick at home, or confined in the sick bay, leave shall not exceed four (4) months.

(2) For an emergency due to the serious illness, injury or death of a very near relative, leave shall not exceed seven (7) days.

(3) Annual leave shall not exceed thirty (30) days.

(4) Christmas and Easter leave shall not exceed a total of twelve (12) days, and leave may be granted for all legal holidays—Federal and state. This leave is in addition to that granted in paragraph (a)(3) of this section.

(5) Leave in addition to that provided in paragraphs (a)(3) and (4) of this section may be granted only if approved in advance by the Supervisor, upon direct request by the Superintendent.

(b) *Enrolled on or after April 1, 1982.* Midshipmen will be granted leave without loss of incentive payments as follows:

(1) Medical leave, as authorized by the school, not to exceed four (4) months.

(2) Christmas and Easter leave and all legal holidays—Federal and state—as authorized by the school. This leave is in addition to that granted in paragraph (b)(3) of this section.

(3) Excused absences, as authorized by the school, not to exceed thirty (30) days per academic year. All unauthorized leave and all excused absences in excess of thirty (30) days will result in loss of incentive payments. Midshipmen receiving student incentive payments may be granted leaves of absence without pay, as approved by the Superintendent, for periods not to exceed one (1) academic year at a time. Midshipmen in a pay status will only be granted a leave of absence if they continue to meet all requirements for graduation in this part, including age requirements.

[48 FR 24081, May 31, 1983]

§ 310.9 Medical attention and injury claims.

(a) *Medical attention and hospitalization.* The school shall be responsible for arranging that a medical officer shall be attached or on call to the school. During the cruise, the School shall assign a medical officer to the Training Ship.

(b) *Compensation claims of Cadets or Midshipmen.* Compensation claims for personal injuries or death sustained by a federally-assisted cadet or midshipman in the performance of official duty shall be forwarded to the Supervisor for transmission to the Office of Workers' Compensation Programs. The Supervisor shall furnish necessary forms.

(c) *Medical care and compensation for Officers and other personnel.* Officers and other personnel of the School, and of the Training Ship may avail themselves of any medical facilities furnished by the State or Federal Government for which they qualify. See, for example, 42 CFR Part 32. Such persons who are not Federal employees shall look to the State alone for pay, allowances, compensation and other benefits during injury or illness.

[46 FR 37694, July 22, 1981, as amended at 48 FR 24081, May 31, 1983]

§ 310.10 Discipline and dismissal.

(a) Each School shall establish and publish rules and regulations governing Cadet and Midshipman discipline and providing for a demerit system for infractions of these rules and regulations. Serious or excessive violations of the rules and regulations by a Cadet or Midshipman may be considered as evidence of inaptitude for the demanding career of a merchant marine officer and warrant dismissal by the school.

(b) Each Cadet or Midshipman shall, upon admission to the School, be furnished a copy of the School's rules and regulations.

(c) Any Cadet or Midshipman placed on probation for failure to meet the conduct requirements of the school may, at the discretion of the Superintendent, be listed as not in good standing for any period not to exceed six (6) months for the purpose of § 310.7(a)(5).

§ 310.11 Cadet uniforms.

Cadet uniforms shall be supplied at the school in accordance with the uniform regulations of the School. Those regulations shall prescribe a distinctive insignia or device approved by the Maritime Administrator.

§ 310.12 Scope and effect.

(a) If any provisions of this subpart conflict with laws and regulations of the State, the appropriate State authorities shall notify the Maritime Administrator in writing of such conflict and pertinent circumstances. The Maritime Administrator, as a matter of discretion, shall take, or not take, any action determined appropriate under the 1958 Act or the Act.

(b) The Maritime Administrator may, after consultation with the Superintendents of the schools issue binding executive instructions supplementing this subpart.

§ 310.12-1 Form of agreement.

(a) The form of agreement between the Maritime Administrator and a school for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act is set forth below. The form of agreement may be augmented by special, additional articles if requested by the State and if agreed to by the Maritime Administrator. Agreement by the Maritime Administrator will be rare and will occur only if (1) the State presents good cause (e.g. explicit requirement of State law) and (2) the requested addition is not inconsistent with the 1958 Act or the Act and this subpart.

UNITED STATES OF AMERICA, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

State Maritime Academy or College Agreement

This Agreement, entered into as of the 1st day of July 1981, by and between the United States of America, acting through the Department of Transportation, Maritime Administration (hereinafter called the "Administration") and the State of ——— (hereinafter called the "State"), acting through the ———— Maritime Academy (hereinafter called the "School").

WITNESSETH

Whereas:

1. The Agreement is effective July 1, 1981. A number of its provisions will become effective October 1, 1981, or later, and are so indicated;

2. "The Maritime Education and Training Act of 1980," Pub. L. 96-453 (hereinafter called the "Act"), effective October 1, 1981, and its predecessor statute "The Maritime Academy Act of 1958," Pub. L. 85-672 (hereinafter called the "1958 Act"), provide for payments to State, Regional, and Territory maritime academies and colleges (hereinafter called "schools") for the maintenance and support of such schools;

3. The 1958 Act provides for payments to the schools for students in attendance at such schools commencing with the day such students begin their first term of work at such schools until the completion of the course of instruction, but in no event for more than four academic years;

4. The Act authorizes the Administration to make payments to students entering into a service obligation agreement with the Administration;

5. The Act authorizes the Administration to pay for the cost of all fuel consumed by a training ship furnished by the Administration while such vessel is being used for training purposes;

6. The Act and the 1958 Act provide for certain requirements regarding courses of instruction and educational standards which any such schools must meet in order to receive said payments referred to in paragraph 2 above; and,

7. The Administration has determined that the School has met or by virtue of this Agreement meets all the requirements referred to in paragraph 6 above.

Now, therefore, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

Article 1. *Assistance Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make annual payments to the school for not in excess of four years if the school has a four-year course and not in excess of three years if the school has a three-year course under this Agreement to be used for the maintenance and support of the school. The amount of each such annual payment shall be not less than the amount furnished to the school for its maintenance and support by the State but shall not exceed $25,000, or $100,000 if the school meets the requirements of Article 5(b) of this Agreement.

Art. 2. *Subsistence Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make payments for each student enrolled in a subsidized status before April 1, 1982, at a rate not in excess of $1,200 for each academic year. These payments shall be made to the school for the account of each such subsidized student who is attending the school. The school agrees that such payments shall be used by the student to assist in defraying the cost of his or her uniforms, textbooks, and subsistence. It is further agreed that the payments under this Article 2 shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid to the school in such installments as the Administration shall prescribe while such student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

Art. 3. *Student Incentive Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to provide the school with service obligation agreement forms for a specified number of students beginning the first term of work at the school on or after April 1, 1982. The service obligation agreement forms shall be signed by the designated students and returned by the school to the Administration which agrees to issue payments to these students in amounts equaling $1,200 for each academic year to assist them in paying the cost of uniforms, books and subsistence. It is further agreed that under Article 3 payments shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid in such installments as the Administration shall prescribe while the student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

Art. 4. *Fuel Payments.*

If funds are appropriated in any given fiscal year and are made available for expenditure by the Administration for fuel consumed by Government-owned training ships furnished to the schools, the allocation of such funds may be as determined in the discretion of the Administration.

Art. 5. *Requirements.*

(a) In consideration of the payments to be made to the school pursuant to Articles 1, 2 and 4 of this Agreement, and of the payments to designated students enrolled in the school pursuant to Article 3 of this Agreement, the school shall, and as a condition of this Agreement agrees to,

(1) Provide courses of instruction in navigation, marine engineering (including steam

and diesel propulsion), the operation and maintenance of vessels and equipment, and innovations being introduced to the merchant marine of the United States; and,

(2) Conform to such standards in such courses, in training facilities, in entrance requirements, and in instructors, as are established by the Administration after consultation with the Superintendents of schools.

(b) In addition to the condition provided in paragraph (a) of this Article 5 and as an express condition to receiving payments of any amount in excess of $25,000 for any one year under Article 1 of this Agreement, the school hereby agrees to admit to its courses of instruction otherwise qualified students resident in any other State or Territory in such numbers as the Administration shall prescribe, except that the number so prescribed shall not, at any time, exceed one third of the total number of students attending the school.

(c)(1) The school agrees that, with respect to the training program for merchant marine officers under the Act and the 1958 Act, and this Agreement, it will, to the extent applicable, comply with the following provisions of law and implementing regulations duly promulgated thereunder (including, but not limited to 15 CFR Part 8): Title VI, Civil Rights Act, 1964 (42 U.S.C. 2000d); Age Discrimination Act of 1975 (42 U.S.C. 6101); and Vocational Rehabilitation section 504 (29 U.S.C. 794). The school further agrees that it will immediately take any measures necessary to effectuate this subparagraph (c)(1).

(2) It is agreed that these assurances are given in consideration of and for the purpose of obtaining and continuing in effect any financial assistance extended after the date hereof to the school by the Administration including any payments to be rendered pursuant to agreements extending financial assistance which were approved prior to such date, and any violation by the school of any of the provisions of this assurance of nondiscrimination shall constitute a breach of this Agreement and of each of such prior agreements.

(3) The school further recognizes and agrees that such financial assistance will be extended by the Administration in reliance upon the representations and agreements made in this assurance of nondiscrimination, and that the United States shall have the right (in addition to any of its other rights under its agreements with the school) to seek judicial enforcement of these assurances. These assurances are binding on the school, its principals, officers, employees, agents, successors, transferees, and assignees.

(d) The Administration is hereby authorized to examine and audit the books, records and accounts of the school whenever it is deemed necessary or desirable. Further, the school agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge, adequate office space and other facilities reasonably required by such auditors of the Administration or other persons designated by the Administration in the performance of their duties in administering the provisions of the payments provided under this Agreement. This provision complies with Federal Management Circular 73-6 providing for a single audit for educational institutions and assigning one Federal agency with the audit responsibility for schools receiving Federal aid.

Art. 6. *Methods of Payment.*

(a) *Assistance Payments.* The school shall submit to the Administration annually, at the time and in the form approved by the Administration, a voucher for the assistance payment provided in Article 1 of this Agreement. Each voucher for an assistance payment whether under the Act or the 1958 Act, shall be supported by certified statements of operating expenses for the preceding year, of an estimate of operating expenses for the year with respect to which the voucher is submitted, of amounts furnished by the State to the school for maintenance and support, and of evidence of compliance with the requirements of paragraph (b) of Article 5 of this Agreement. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(b) *Subsistence Payments.* The school shall submit a monthly voucher, in form approved by the Administration, for the subsistence payments provided in Article 2 of this Agreement. Each voucher for subsistence payments shall be supported by a certified Daily Attendance Report listing the names of all subsidized students and the number of days each was in attendance at the school and is entitled to payment as stated on such voucher. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(c) *Student Incentive Payments.* The school shall submit a monthly certified Daily Attendance Report listing the names of all designated students who are entitled to the student incentive payments provided in Article 3 of this Agreement and the number of days each was in attendance at the school and is entitled to payment. The Administration shall issue quarterly payments directly to such students.

(d) *Fuel Payments.* Upon notice from the Administration that appropriated funds are available for fuel payments provided in Article 4 of this Agreement, the school will submit a statement of the fuel consumed by the Government-owned training ship supported by copies of all billings representing fuel purchases, a statement of fuel consumed while such ship was being used for training purposes, copies of appropriate fuel consumption entries in the engineering log, and such other information as the Administration may require. The Administration will prepare the necessary voucher and make payment to the school.

Art. 7. *Public Information.*

It is agreed that the school shall include in its curriculum catalogue, student information pamphlets, brochures, and other public information materials, a detail description of the assistance available to the school and its students under the Act, the 1958 Act and this Agreement, including the service obligations of student and graduates who first enter the school on or after April 1, 1982.

Art. 8. *Regulations.*

This Agreement is subject to all the provisions of Part 310, Subpart A, Title 46, Code of Federal Regulations, and the school hereby agrees to conform to said provisions as they may be amended from time-to-time during the period this Agreement is in effect.

Art. 9. *Officials not to Benefit or be Employed.*

No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

Art. 10. *Disputes.*

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Director, Office of Maritime Labor and Training who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the school, which decision shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the school appeals by mailing or otherwise furnishing said Director, Office of Maritime Labor and Training a written appeal addressed to the Maritime Administrator, Department of Transportation. The decision of the Maritime Administrator, Department of Transportation, or his or her duly authorized representative, shall be final and conclusive. In connection with any appeal, the school shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the school shall proceed diligently with performance of the Agreement in accordance with the decision of the Director, Office of Maritime Labor and Training.

Art. 11. *Duration of Agreement.*

This Agreement is effective as of the day and year first set forth hereinabove and shall remain in full force and effect for a period of —— years after said date, unless sooner terminated by either party as herein provided.

Art. 12. *Termination of Agreement.*

This Agreement may be terminated by either party upon sixty (60) days written notice to the other party, *Provided, however*, that notwithstanding any such termination the parties hereto shall continue to be responsible for the faithful performance of all of the terms and provisions of this Agreement through the effective date of such termination. Termination or expiration of this Agreement shall neither affect nor relieve either party of any liability or obligation that may have arisen or accrued prior thereto.

Art. 13. *Renewal of Agreement.*

Unless terminated by notice, as provided for herein under Article 12 of this Agreement, the rights and privileges granted to and the obligations assumed by, the parties together with all other provisions of this Agreement shall continue in full force and effect and shall be renewed from year-to-year for an additional period of one (1) year from the expiration date herein, unless either party shall at least three (3) months prior to the date of expiration of any additional one (1) year period notify the other party in writing that it does not desire the Agreement to be extended for such additional one (1) year period. This Agreement as extended year-to-year as aforesaid, may be amended, modified or supplemented in writing at any time by the mutual consent of the parties hereto.

Art. 14. *Assignment Prohibited.*

It is hereby agreed by the school that the Agreement, or any interest herein, shall not be assigned to any other person without the prior written consent of the Administration which consent may be subject to such terms and conditions as the Administration deems appropriate.

Art. 15. *Availability of Funds.*

It is understood and agreed by and between the parties hereto that the obligations under this Agreement shall be deemed executory to the extent of the monies available to said parties for the purpose thereof and no liability on account thereof shall be incurred beyond such available monies by either of said parties.

Art. 16. *Prior Agreement.*

It is hereby understood and agreed by and between the parties hereto that the agreement in effect between the parties on the date prior to the effective date of this Agreement is superseded by this Agreement but only as to obligations not incurred prior to the expiration date of said prior agree ment under the provisions of said prior agreement.

In witness whereof, the UNITED STATES OF AMERICA, represented as aforesaid, has caused this Agreement to be executed on its behalf in three counterparts as of the day and year first written hereinabove and actually on the —— day of —— 19—.

Attest:

United States of America, Department of Transportation, Maritime Administration.

Secretary. ————————————

By: ————————————

————————————

Maritime Administrator of Maritime Affairs.

[Seal]

Attest:

State of ————————————

————Maritime Academy

By: ————————————

[Seal]

Approved as to form:

————————————

General Counsel, Maritime Administration.

[46 FR 37694, July 22, 1981. Redesignated at 48 FR 24081, May 31, 1983]

Subpart B—Regulations for the Government of the United States Maritime Service

AUTHORITY: Sec. 4, 55 Stat. 607; 34 U.S.C. App. 1123d.

SOURCE: General Order 23, Rev., (WSA Function Series), 11 FR 7810, July 18, 1946, unless otherwise noted.

310.13 Definitions.

When used in this subpart:

(a) "Administration" means Mari-ime Administration.

(b) "Administrator" means Maritime Administrator.

(c) "Deputy administrator" means Deputy administrator, Maritime Ad-inistration.

(d) "The service" or "Maritime Serv-e" means the United States Maritime ervice.

(e) "Commandant" means the com-andant of the United States Mari-me Service, the officer in charge of nd directly administering the service.

(f) "Enrollees" means persons en-olled in the United States Maritime ervice.

(g) "Merchant marine" means the United States merchant marine.

(h) "Merchant vessels of the United States" means oceangoing or Great Lakes vessels of 500 gross tons or over documented under the laws of the United States and engaged in the foreign or domestic commerce of the United States.

(i) "Administrative duty" means duty performed by enrollees while on operational or staff assignments.

(j) "Training duty" means duty performed by enrollees while undergoing training and instruction.

(k) "Reserve duty" means all duty which is neither administrative nor training duty as herein described.

[G.O.23, Rev.,(WSA Function Series), 11 FR 7810, July 18, 1946. Redesignated at 48 FR 24081, May 31, 1983]

§ 310.14 Enrollment and training.

Enrollment and training in the service shall be open to all American citizens who are licensed and unlicensed members of the merchant marine and who comply with the requirements prescribed in this subpart, and to citizens without previous experience in the merchant marine who desire to train for service therein and who qualify under this subpart. Applicants must possess the necessary physical, mental and moral qualifications for service at sea or for the duties to which assignment is contemplated. Graduates of schools under the jurisdiction or supervision of the Administration may be enrolled in such ranks or ratings as determined by the commandant; such ranks, grades, and ratings to be the same as are now or shall hereafter be prescribed for the personnel of the Coast Guard. In the selection of applicants for enrollment, no discrimination shall be made because of an applicant's race, creed, color or national origin. Eligibility for enrollment shall be determined by the commandant in accordance with this subpart.

§ 310.15 Allotments and expenditures.

(a) Expenditures and obligations for the service shall be limited to the allotment of funds by the Administration to the service and to authorized appropriations.

(b) Expenditure of funds may be authorized by the commandant, as required for the proper administration of the service, including pay of personnel, purchases of equipment, provisions, and supplies, expenses of medical examination, medical treatment and hospitalization, communication and travel expense, and such other expenses of an administrative or ministerial nature as may be necessary for the efficient maintenance of the service.

(c) The deputy administrator shall report to the administrator all accounts and other financial matters of the service in such manner and form and at such time as the administrator shall prescribe.

§ 310.16 Authority of commandant.

In compliance with applicable Federal statutes and subject to the regulations prescribed by the Administration, the commandant is authorized:

(a) To administer the service;

(b) To employ for the service, on the account of Administration, such civil employees as may be necessary for the conduct and maintenance of the service;

(c) To enroll, disenroll, assign to administrative, training, or reserve duty, and release from duty the enrollees of the service;

(d) To establish and regulate the ranks, grades, and ratings of enrollees in the service;

(e) To direct and conduct the courses of training;

(f) To provide for the maintenance of order and to prescribe such rules and regulations as may be necessary for discipline and morale;

(g) To authorize the procurement of provisions, clothing, materials, equipment, and services for the operation of the service;

(h) To dispose, under applicable federal statutes, of such materials, clothing, equipment, and supplies as shall be found to be no longer serviceable;

(i) To authorize and direct necessary travel in behalf of and on the account of the service;

(j) To prescribe all necessary forms;

(k) To delegate such authority as is necessary to subordinate personnel of the service;

(l) To convene boards consisting of assigned personnel to investigate accidents to service personnel, damage to service property and any other matters or incidents which, in his opinion, require examination;

(m) To issue all necessary regulations, directions, instructions, and memoranda for the proper administration of the service, its enrollees, employees, stations, ships, and facilities.

§ 310.17 Enrollment: Original and regular.

(a) All original enrollments, except as apprentice seaman, shall be probationary for a period not to exceed four months. The enrollment period for apprentice seamen shall be prescribed from time to time by the commandant.

(b) After the probational period of enrollment an enrollee whose conduct and qualifications are satisfactory shall be automatically considered a regular enrollee.

(c) Regular or probationary enrollees may be advanced in rank or rating when found qualified by the commandant.

(d) Every enrollee shall, upon enrollment, take an appropriate oath or affirmation, prescribed by the commandant.

(e) Every enrollee of officer rank on administrative duty shall be issued a commission signed by the administrator.

(f) Every enrollee of officer rank on reserve or training duty shall be issued a commission signed by the commandant.

[G.O., 23, Rev., (WSA Function Series), 11 FR 7810, July 18, 1946, as amended by Amdt. 1, 18 FR 4892, Aug. 15, 1953]

§ 310.18 Physical examinations and medical treatment.

(a) Physical standards shall be prescribed by the commandant.

(b) All Maritime Service enrollees shall take physical examinations at the following times:

(1) Upon assignment to administrative or training duty or release therefrom;

(2) At least once each year while serving on administrative duty;

(3) When applying for promotion if not previously examined within two years;

(4) When applying for direct appointment, in accordance with § 310.31, if not previously examined within the preceding twelve months.

(c) Physical examination reports shall be made on a form prescribed by the commandant. Defects considered not sufficient to disqualify an enrollee from the performance of the duties of his rank may be waived by the commandant.

(d) All medical, dental, hospital and domiciliary treatment, including all necessary examinations, of all enrollees shall be obtained through the Public Health Service insofar as possible. In emergency cases and where Public Health Service or government facilities are not available, hospitalization and medical treatment in private hospitals and by private physicians may be authorized under regulations now or hereafter prescribed by the Maritime Administration or the Public Health Service.

[G.O. 23, Rev.(WSA Function Series), 11 FR 7810, July 18, 1946, as amended by Supp. 1, 11 FR 8196, July 30, 1946; Amdt. 1, 18 FR 4706, Aug. 8, 1953]

§ 310.19 Duty.

(a) Duty status in the service may be administrative, training or reserve.

(b) Enrollees may be placed in a reserve duty status subject to assignment to or return to administrative or training duty as determined by the commandant.

(c) Enrollees may be maintained on administrative duty for such periods as may be determined by the commandant.

(d) While actually attending one of the State Maritime Academies under federal regulations, cadets may be enrolled in the Maritime Service and placed on training duty. While in such status, they will be entitled to the pay provided for cadets.

§ 310.20 Disenrollment: Voluntary and involuntary.

(a) Subject to applicable Federal statutes and regulations, any enrollee in the service may be disenrolled upon request. The disenrollment shall be effective on the date of action on such request.

(b) Any enrollee may be disenrolled from the service for cause, for any of the following reasons:

(1) During the probationary period of original enrollment or while in training or on administrative duty thereafter, for conduct or qualifications deemed unsatisfactory to the service.

(2) For failure to serve 24 months in any period of 36 consecutive months on merchant vessels of the United States. When computing any 36 month period under this subsection, active duty in the military or naval establishment of the United States, or on administrative or training duty with the Maritime Service, shall be excluded.

(3) For failure in such period of 36 consecutive months to serve any period or periods required on administrative or training duty in the service.

(4) For physical or mental disability.

(5) For conduct such as to bring discredit upon the service.

(c) Any person disenrolled for cause may, upon removal of the disability or upon other correction of the cause of disenrollment, be reenrolled in the service.

§ 310.21 Pay and allowances.

(a)(1) Enrollees of the Maritime Service while on active administrative duty shall receive the same pay and allowances according to cumulative years of service of their respective ranks, grades and ratings as are now or shall hereafter be prescribed for personnel of the Coast Guard with similar ranks, grades and ratings in Titles II and III of the "Career-Compensation Act of 1949" (Pub. L. 351, 81st Cong.), as amended by sections 1 (a), (b) and (d), 3 and 5, Pub. L. 346, 82d Congress, approved May 19, 1952; 66 Stat. 79, including the rank of Commodore as authorized by 55 Stat. 604 as amended: *Provided, however,* That enrollees below officer rank who are entitled to receive basic allowances for quarters shall be entitled to an increase of such allowances in an amount equivalent to fourteen (14) per cent of the monthly rates according to the pay grade to which assigned or in which distributed for basic pay purposes as provided in section 302(f), 63 Stat. 812; 37 U.S.C. 252.

(2) Service creditable in the computation of basic pay as prescribed in Pub. L. 351, 81st Congress, shall include, but not be restricted to, enrollment in the Maritime Service on Administrative duty, active or reserve.

(3) Enrollees of the Maritime Service in a training status shall until June 30, 1950, as provided by existing appropriations, continue to receive the monthly rates of pay which have been effective since July 1, 1949, as follows:

Cadets and recruits	$65.00
Licensed officers	125.00
Unlicensed seamen	75.00

(4) Travel, transportation and subsistence for enrollees of the Maritime Service in a training status shall be prescribed by Maritime Service Instructions.

(b) After June 30, 1946, an enrollee paid at the rates prescribed in paragraph (a) of this section shall not be paid additional compensation for administrative duty. Pay and allowances for administrative duty in effect on June 30, 1946, shall be granted if such pay and allowances are greater than the pay prescribed in paragraph (a) of this section. When promoted, an enrollee shall receive the pay of his new grade or rating as prescribed in paragraph (a) of this section or the same pay (including administrative duty allowance) as he received for his lower grade as of June 30, 1946, whichever is the greater.

(c) Longevity pay for all enrollees on administrative duty shall be added to the base pay of said enrollees under rules similar to those now or hereafter provided for such pay of the corresponding ranks, grades and ratings of the Coast Guard.

(d) Retirement and disability pay for officers and enlisted men shall be allowed under laws, rules and regulations now or hereafter applicable to the Coast Guard. All service under the federal government shall count toward retirement and in the computation retirement pay.

(e) Pay shall be computed on th basis of 30 days per month. An enrol ee shall be credited, in the computation of his pay, with allowances fo each day, or fractions thereof, o which duty is performed. He shall no be paid when absent from duty unles on authorized annual or sick leave.

[G.O. 23, Rev., (WSA Function Series), 1 FR 7810, July 18, 1946, as amended by Sup 1, 11 FR 8166, July 30, 1946; Supp. 2, 11 F 13792, Nov. 23, 1946; Supp. 3, 14 FR 770 Dec. 24, 1949; Amdt. 1 to Supp. 3, 17 F 5142, June 6, 1952]

§ 310.22 Transportation and travel.

(a) Enrollees upon original enrollment may, in lieu of any other travel allowance, be furnished transportation, including sleeping car or stateroom accommodations from the place of enrollment to a training station or training vessel.

(b) An enrollee who is disenrolled or released to reserve duty, except at his request or for reasons within his control, may be furnished transportation including pullman or sleeping car accommodations from the place of disenrollment to the place of enrollment. An enrollee disenrolled at his request or for reasons within his control before the completion of his probationary period shall not be entitled to travel allowance or to transportation in kind.

(c) The commandant shall prescribe the travel allowances and transportation in kind for probationary enrollees originally enro''ed in the seventh pay grade in connection with their original enrollment, release from administrative or training duty, or disenrollment and shall have authority to transport them to such place or places as may be determined to be for the interest of the government.

[G.O. 23, Rev., (WSA Function Series), 11 FR 7810, July 18, 1946, as amended by Supp. 3, 14 FR 7707, Dec. 24, 1949]

§ 310.23 Transportation of dependents and household effects.

Enrollees on administrative duty shall be entitled to the same allowances for transporting dependents and household effects as are now or may hereafter be prescribed for officers and men in the Coast Guard.

§ 310.24 Clothing and equipment.

(a) Officers and warrant officers of the service, on administrative duty where uniforms are required to be worn, shall be entitled to a cash allowance for uniforms in the amount of $250, after having served a satisfactory 3 month period of administrative duty, and provided they agree in writing to serve at least one year, and certify that they have the required uniforms and insignia in their possession. The uniforms required shall be, in number and kind, the same as prescribed for officers of the United States Coast Guard going on active duty, but Maritime Service insignia shall be worn with all uniforms. Deduction from the uniform allowance shall be made for any articles of uniform obtained on purchase orders, or otherwise issued from Maritime Service supplies.

(b) Enrollees below the rank of warrant officers of the service shall be supplied, without charge, with such clothing and equipment as fixed through clothing bounties approved by the commandant. Other government property may also be loaned to such personnel. Enrollees on administrative duty may purchase regulation uniforms and accessories, the cost thereof to be deducted from their pay.

(c) It shall be unlawful for any person, not an enrollee or officer of the Maritime Service, to wear the duly prescribed uniform or insignia of the Maritime Service or any distinctive part of such uniform or insignia, or a uniform or insignia, any part of which is similar to a distinctive part of the duly prescribed uniform or insignia of said service. Any enrollee or officer who resigns or is disenrolled for cause from the Maritime Service shall, upon such resignation or disenrollment for cause, surrender all insignia attached to his uniform or uniforms, to the responsible officer of any Maritime Service unit. Failure to comply with the foregoing regulations shall be prosecuted to the fullest extent of the law.

§ 310.25 Subsistence.

(a) [Reserved]

(b) Subsistence at government expense shall be supplied to all members of the service while on administrative duty, except officers and warrant officers. General messes shall be established at training stations and on board training vessels as may be necessary. Such general messes shall be conducted in the manner provided in pay and supply instructions for general messes. A subsistence allowance at the rate of 75 cents per day while on training duty will be paid for each cadet enrolled at the State Maritime Academies under Federal regulation who is also enrolled in the Maritime Service. This subsistence allowance may be paid monthly to the State Maritime Academies for the number of cadets and for the number of days on which subsistence is actually furnished by the State Maritime Academies. While the State Maritime Academy cadets are cruising on a Maritime Service vessel, this subsistence allowance will not be paid but subsistence will be furnished by the Maritime Service in kind.

(c)—(d) [Reserved]

(e) Determination as to availability of government quarters and messing facilities shall be made by the commandant.

[G.O. 23, Rev. (WSA Function Series), 11 FR 7810, July 18, 1946, as amended by Supp. 1, 11 FR 8166, July 30, 1946; Supp. 3, 14 FR 7707, Dec. 24, 1949]

§ 310.26 Loss or damage.

There may be deducted from the pay of any member of the service sums sufficient to cover the value of any Government property lost or willfully damaged by such person.

§ 310.27 Death of enrollees.

The commandant, subject to the provisions of existing and applicable laws, is authorized to incur expenses in connection with the transportation and burial of the remains of enrollees who die while on administrative or training duty.

§ 310.28 Assignments.

Enrollees in the service on administrative or training duty may be assigned to headquarters, a vessel, station, or other unit maintained by the service; to units of the U.S. Merchant Marine Cadet Corps; or to such vessels, shipyards, plants, and industrial and educational organizations as the commandant may designate.

§ 310.29 Ship's service stores.

Ship's service stores for the sale of tobacco, candy, toilet articles, clothing, supplies, and similar merchandise may be established and maintained at training stations, on the training ships, and other units of the Maritime Service.

§ 310.30 Courses of training.

The courses of training at stations and on ships shall be appropriate to the duties performed aboard merchant vessels by enrollees under their licenses or certificates and shall include the following subjects: Lifeboat instruction, including rowing; emergency drills, including fire and abandon ship; maritime law pertaining to seamen; hygiene and first aid; navigation; seamanship; signals; marine engineering; engine room and fire room routine; shop work and overhaul of machinery; care of staterooms, quarters and supplies; procurement, handling, and cooking of food; serving of food and care of tableware (mess gear); and instruction in special ratings, such as radio operators, electricians, and clerical workers.

§ 310.31 Direct appointment of officers from the merchant marine.

(a) Any officer of the merchant marine is eligible to be enrolled in the service in a rank commensurate with his position and duties in the merchant marine without attending a training school providing he qualified under this subpart.

(b) The following qualifications are prescribed for such appointment:

(1) An applicant must be a licensed officer of the merchant marine serving on a vessel documented under the laws of the United States of not less than 1,000 gross tons: *Provided, however,* That an applicant with outstanding qualifications may be specially appointed by the commandant.

(2) An applicant must be employed in connection with the operation or management of ships of the merchant marine, or in connection with the training of personnel for the merchant marine, or the applicant's services must be desired for special duty.

(3) An applicant in the staff branch must be serving under a license or certificate issued by appropriate authority and so qualifying him for the rating.

(4) An applicant must have been employed in his present capacity aboard ship for at least one year immediately preceding the filing of his application, unless considered otherwise qualified by the commandant.

(5) During wartime the applicant must agree, if requested, to take such extension and correspondence courses under such rules and regulations and upon such terms as the commandant may prescribe.

(6) The following minimum age limits are fixed for original appointments or promotions to ranks as indicated below:

Captain	[illegible]
Commander	[illegible]
Lieutenant Commander	[illegible]
Lieutenant	[illegible]
Lieutenant (jg)	[illegible]
Ensign or warrant officer	[illegible]

(7) The following table of maximum rank for appointments and promotions is prescribed:

Duties—Merchant Marine	Passenger vessels (A) 15,000 gross tons and over	Passenger vessels (A) 6,500 gross tons and over	Cargo vessels 5,000 gross tons and pass. vessels. (A) 4,500 gross tons and over	Vessels under 5,000 gross tons
Deck and engine departments:				
First ranking officer (master and chief engineer).	Captain (B)	Captain	Commander (D)	Lieutenant Commander (F)

Duties—Merchant Marine	Passenger vessels (A) 15,000 gross tons and over	Passenger vessels (A) 6,500 gross tons and over	Cargo vessels 5,000 gross tons and pass. vessels. (A) 4,500 gross tons and over	Vessels under 5,000 gross tons
Second ranking officer	Commander	Commander	Lieutenant Commander.	Lieutenant.
Third ranking officer	Lieutenant Commander.	Lieutenant Commander.	Lieutenant	Lieutenant (jg).
Fourth ranking officer	Lieutenant	Lieutenant	Lieutenant (jg)	Ensign.
Fifth ranking officer	Lieutenant (jg)	Lieutenant (jg)	Ensign	
Sixth ranking officer	Ensign	Ensign		
Chief electrician and chief refrigeration engineer (C).	Lieutenant (jg)	Lieutenant (jg)	Ensign	
Second electrician and second refrigeration engineer (C).	Ensign	Ensign		
Third electrician and third refrigeration engineer (C).	Warrant electrician	Warrant electrician		
Staff and steward departments:				
Chief purser and chief steward (E).	Lieutenant Commander.	Lieutenant Commander.	Lieutenant (I)(M)	Lieutenant (jg)(K)(M).
Second ranking officer and chef (E).	Lieutenant	Lieutenant	Lieutenant (jg)(J)(M).	
Third ranking officer and sous chef (E).	Lieutenant (jg)	Lieutenant (jg)		
Fourth ranking officer	Ensign	Ensign		
Chief storekeeper	Warrant ship's clerk			
Medical department:				
Senior medical officer (L)	Commander	Lieutenant Commander.	Lieutenant (jg)	
Junior medical officer (L)	Lieutenant Commander.	Lieutenant		

Radio department	Holders of first class radiotelegraph license (N)	Holders of second class radiotelegraph license
Chief radio operator	Lieutenant (G)	Ensign (H).
Second ranking radio operator	Lieutenant (jg)	Ensign.
Third ranking radio operator	Ensign	Do.

Notes:

(A) Ocean-going vessels licensed to carry 100 or more passengers and which normally engage in passenger-carrying trade.

(B) One rank higher for masters after ten years' service as master on this class vessel.

(C) Ocean engineer license or certificate of service as electrician or refrigerating engineer, qualified member engine department required. Appointment limited to electricians obtaining required service aboard turbo-electric drive or motor vessels, and to refrigerating engineers obtaining required service aboard vessels with refrigerated cargo holds.

(D) One rank higher for masters and chief engineers after ten years' service as master or chief engineers vessels 2,500 gross tons or over. In no case shall chief engineers wear the insignia of a higher rank than that worn by the master.

(E) Chef and sous chef on passenger vessels 15,000 gross tons or over, only.

(F) One rank higher after ten years' service as master or chief engineer, vessels over 2,500 gross tons. Two ranks higher after fifteen years' service as master or chief engineer, vessels over 2,500 gross tons. In no case shall chief engineers wear the insignia of a higher rank than that worn by the master.

(G) Five years' service as chief or sole operator required, to be obtained while holding first-class license.

(H) After one year's service on first class radiotelegraph license, one rank higher.

(I) One rank lower unless three years' service this capacity aboard this class vessel is obtained.

(J) Passenger vessels only.

(K) Off-shore and inter-coastal trades only. One rank lower unless three years' service. This capacity aboard vessels 2,500 gross tons or more secured, or if service, this capacity is secured aboard vessels under 2,500 gross tons.

(L) License to practice medicine issued by state or territory of the United States required.

(M) Service on Great Lakes and Inland Waterways not acceptable.

(N) Holders of temporary limited licenses one rank lower.

(8) The commandant is authorized to grant waivers to allow the issuance of provisional promotion to cover the proper ranking as prescribed by paragraph (b)(7) of this section. Such provisional promotion shall be effective only during such time as the position held requires such rank.

(9) The provisions of paragraphs (b)(1) through (6) of this section shall not apply to graduates of schools under the supervision or jurisdiction of the administrator; and paragraph (b)(7) of this section shall apply only in promoting such graduates.

(c) Applications for appointment, except those provided in paragraph (b)(9) of this section shall be forwarded to the commandant accompanied by a physical examination report and including a letter from applicant's employer or employers certifying to the time served in various capacities aboard vessels and indicating satisfactory service. Annexed to the application must be a certificate signed by a Maritime Service enrolling officer that the license claimed has been sighted.

(d) All applicants shall take a physical examination and meet the prescribed physical standards pursuant to § 310.18. Periodic examination may be prescribed.

(e) In qualifying for promotion, time served in a capacity higher than that required for the promotion shall be multiplied by the factor two. No officer in the deck or engine branch shall be promoted unless said officer possesses the requisite license. No officer shall wear the Maritime Service insignia of a higher rank than called for by his position aboard ship, regardless of the Maritime Service rank held by said officers.

(f) Officers serving a minimum of eight months per year aboard vessels of the United States merchant marine will be eligible for one month's refresher training on active duty, with the pay of his rank in accordance with the provisions of the Maritime Service instructions: *Provided,* That training facilities and appropriated funds are available therefor. Officers enrolled in the Maritime Service, shall, if requested, take such extension and correspondence courses under such rules and regulations and upon such terms as the commandant of the Maritime Service may prescribe to become entitled to the benefits in this order set forth.

(g) Any officer, who for a period of 6 months or more, serves in an unlicensed capacity while aboard ship shall be reduced temporarily to the grade of chief petty officer, while so serving.

(Sec. 216, 52 Stat. 965, as amended; 46 U.S.C. 1126)

[G.O. 23, Rev. (WSA Function Series), 11 FR 7810, July 18, 1946, as amended by Amdt. 1 to Supp. 1, 18 FR 4706, Aug. 8, 1953]

§ 310.32 Investigation service.

An investigation service may be established in the Maritime Service to perform the following functions: to promote the morale and welfare of the service; to aid in the enforcement of discipline; to cooperate with all civil and military law enforcement agencies in the prevention of crime and in the apprehension of offenders on Maritime Service units; to inform enrollees on uniform regulations; to inform manufacturers and distributors on these regulations; to prevent the unauthorized wearing of uniforms or insignia or the unauthorized sale or possession thereof; and to perform such other duties as may be prescribed by the commandant.

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

AUTHORITY: Secs. 204(b) and 1301-1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b) and 1295-1295g); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

SOURCE: 47 FR 21812, May 20, 1982, unless otherwise noted.

§ 310.50 Purpose.

The regulations in this subpart govern the nomination, admission and appointment of midshipmen to the United States Merchant Marine Academy.

§ 310.51 Definitions.

(a) "Academy" means the United States Merchant Marine Academy.

(b) "Act" means the Maritime Education and Training Act of 1980, Pub. L. 96-453, 94 Stat. 1997, 46 U.S.C. 1295-1295g.

(c) "Administration" means the Maritime Administration, Department of Transportation.

(d) "Administrator" means the Administrator of the Maritime Administration.

(e) "Citizen" means an individual who, by birth or naturalization, owes national allegiance to the United

States, but the term excludes United States nationals.

(f) "Foreign student" means an individual who owes national allegiance to a country or political entity other than the United States, and the term includes United States nationals.

(g) "NOAA" means the National Oceanic and Atmospheric Administration.

(h) "USNR" means the United States Naval Reserve.

§ 310.52 General.

(a) Midshipmen are appointed to the Academy for training to prepare them to become officers in the U.S. merchant marine. The Academy, located at Kings Point, New York, is maintained by the Government as a part of the Administration. After successful completion of the 4-year course of study, a graduate of the Academy shall receive a Bachelor of Science degree and a merchant marine license as either a third officer or third assistant engineer (or both licenses upon completion of a special curriculum and passing the respective license examinations) issued by the U.S. Coast Guard. If qualified, a graduate may be commissioned as an officer in a reserve component of an armed force of the United States.

(b) Midshipmen entering the Academy after April 1, 1982, are required by the Act to sign an agreement committing them to service obligations following the date of graduation. The terms of the service obligation contract are set forth in § 310.58 of this subpart.

§ 310.53 Nominations and vacancies.

(a) *Nominating officials.* (1) Each Senator and Member of the House of Representatives (including delegates from Guam, the Virgin Islands and the District of Columbia and the Resident Commissioner from Puerto Rico), the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office) may nominate ten (1) candidates to compete for admission to the Academy.

(2) In accordance with the Act (46 U.S.C. 1295b (b)(1)), nominating officials may only nominate candidates who are residents of the State or other geographic area which the particular nominating official represents, as follows:

The candidate must be a resident of—	To be nominated by—
The State	A Member of the U.S. Senate representing that State.
The State	A Member of the U.S. House of Representatives whose Congressional District is located in that State.
Guam	The Delegate to the U.S. House of Representatives representing Guam.
Virgin Islands	The Delegate to the U.S. House of Representatives representing the Virgin Islands.
District of Columbia	The Delegate to the U.S. House of Representatives representing the District of Columbia.
Commonwealth of Puerto Rico.	The Resident Commissioner to the United States from Puerto Rico.
American Samoa	The Governor of American Samoa (until a Delegate to the U.S. House of Representatives representing American Samoa takes office).
Any area or installation located in the Republic of Panama which is made available to the United States pursuant to the (i) the Panama Canal Treaty of 1977, (ii) the agreements relating to and implementing the Treaty signed September 7, 1977, and (iii) the Agreement between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979; *Provided,* That no residence in the Republic of Panama is required if nomination is due to his or her parent's employment in the Panama Canal or in the Republic of Panama by the United States Government or the Panama Canal Commission.	Panama Canal Commission.
Northern Mariana Islands	Governor of the Northern Mariana Islands.
Trust Territory of the Pacific Islands.	Secretary of the Interior.

(3) Individuals must be residents of the Trust Territory of the Pacific Is-

lands to qualify for designation by the Secretary of the Interior.

(4) Nominating officials may select nominees, and the Secretary of the Interior may select designees, by any method they wish, including a screening examination.

(5) Candidates from nations other the United States must be nominated by an official of their home government and have their applications approved by the United States Government official specified in § 310.66(a), or (c) or (d).

(b) *Vacancies.* (1) The number of vacancies in each entering class allocated to each State is in proportion to the representation in Congress from that State.

(2) In each entering class, two vacancies shall be allocated each year for individuals nominated by the Panama Canal Commission; one vacancy each to nominees from Puerto Rico, Guam, Virgin Islands, Northern Marian Islands and American Samo; and four vacancies to nominees from the District of Columbia.

(3) Not to exceed four (4) individuals at any one time may be admitted from the Trust Territory of the Pacific Islands and twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, but not more than two (2) individuals from any one of such nations shall receive training at the same time.

(4) The Administrator may permit, upon approval of the Secretary of State, not more than thirty (30) individuals at one time from nations other than the United States to receive instruction at the Academy, subject to the condition that the foreign nations reimburse the Administrator for the cost of such training.

(5) The distribution of each entering class by State is:

Alabama	4
Alaska	1
Arizona	3
Arkansas	2
California	19
Colorado	4
Connecticut	4
Delaware	1
Florida	10
Georgia	5
Hawaii	2
Idaho	2
Illinois	9
Indiana	3
Iowa	3
Kansas	4
Kentucky	3
Louisiana	2
Maine	4
Maryland	2
Massachusetts	5
Michigan	5
Minnesota	7
Mississippi	3
Missouri	3
Montana	3
Nebraska	2
Nevada	2
New Hampshire	2
New Jersey	6
New Mexico	2
New York	15
North Carolina	6
North Dakota	1
Ohio	8
Oklahoma	2
Oregon	3
Pennsylvania	10
Rhode Island	2
South Carolina	4
South Dakota	1
Tennessee	4
Texas	13
Utah	2
Vermont	1
Virginia	5
Washington	5
West Virginia	2
Wisconsin	4
Wyoming	1

(6) The distribution of each entering class otherwise provided under the Act is:

Northern Mariana Islands	1.
Puerto Rico	1.
District of Columbia	4.
Republic of Panama	2.
Guam	1.
American Samoa	1.
Virgin Islands	1.
Administrator	Not to exceed 40.

(7) The distribution of students provided for under the Act without reference to entering class is:

	Not to exceed at any one time
Trust Territory of the Pacific Islands	4
Western Hemisphere nations (other than U.S.)	12
Foreign nations	30

(c) *Request for nomination.* A person interested in admission to the Academy who feels that he or she meets the requirements in this subpart should request a nomination from his or her Senator or Representative or other appropriate nominating official listed in paragraph (a) of this section.

(d) *Date for nominations.* The nominating official will send a nomination form for each nominee to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, Long Island, New York 11024, normally between August 1 and December 31 of the school year preceding that in which admission to the Academy is desired.

(e) *Appointments.* (1) The Administrator shall make appointments to fill the vacancies allocated pursuant to paragraph (b) of this section from among qualified nominees, in order of merit, from each geographical area. The order of merit shall be established according to the procedure as specified in § 310.57(b). Such appointments first shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter, appointments shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter appointments shall be made from among remaining qualified nominees (national alternates) in order of merit regardless of the area of residence.

(2) The Administrator may appoint, without competition, not more than forty (40) qualified citizens who possess qualities deemed to be of special value to the Academy. In making these appointments, the Administrator shall give special consideration to achieving a national demographic balance and to recognizing individuals with qualities deemed to be of special value to the Academy.

[47 FR 21812, May 20, 1982, as amended at 51 FR 17741, May 15, 1986]

§ 310.54 General requirements for eligibility.

(a) *Citizenship.* All candidates shall be citizens of the United States except: (1) Nominees from foreign nations; (2) nominees from the Northern Mariana Islands; (3) designees from the Trust Territory of the Pacific Islands; and (4) nominees from American Samoa, who may be American nationals. No person who is not a citizen shall be entitled to any office or position in the U.S. merchant marine by reason of his or her graduation from the Academy, until such person shall have become a citizen.

(b) *Age.* On July 1 of the year of admission to the Academy, a candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25) birthday.

(c) *Character.* A candidate shall be of good moral character. The Administrator may reject the nomination of any candidate whose character is incompatible with the Academy's standards. No person who has been dismissed or compelled to resign from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, the Academy or a State maritime academy for improper conduct shall be eligible for appointment as a midshipman at the Academy. No person whose last discharge from any armed force was under conditions other than honorable or who has had a merchant mariner document removed or suspended for cause shall be eligible for appointment as a midshipman.

(d) *Investigation.* To be eligible for appointment, all candidates who are United States citizens shall be completely loyal to the United States and shall meet the requirements established by the Department of the Navy for designation as Midshipman, USNR (including the Merchant Marine Reserve, USNR). Candidates for appointment shall execute documents approved by the Administrator for the purpose of a security and suitability investigation. Appointment as a Midshipman, USNR (including the Merchant Marine Reserve, USNR) shall be a condition of admission for an individual who is a citizen. A candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation shall be subject to immediate separation should the candidate, as a result of the investigation, fail to meet the requirements established for appointment as Midshipman, USNR.

(e) *Waivers.* There shall be no waivers of general eligibility requirements.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66)

[47 FR 21812, May 20, 1982, as amended at 49 FR 45858, Nov. 21, 1984]

§ 310.55 Scholastic requirements.

(a) *Academic requirements*—(1) *Credits.* Applicants shall have satisfactorily completed their high school education at an accredited secondary school, or equivalent, and shall present at least 15 units of credit for subjects acceptable to the Academy, comprised of:

(i) 7 required units, as follows:

(A) 3 units of Mathematics (from algebra, geometry and trigonometry);

(B) 3 units of English; and

(C) 1 unit of Physics or Chemistry.

(ii) 8 other units, preferably chosen from the following fields:

(A) Additional methematics and science;

(B) Foreign language;

(C) Economics; and,

(D) Social science.

(2) *Evidence of academic work.* Before approval of an application, each applicant shall submit evidence showing completion of high school education, or showing that such education will be completed no later than June 30 of the year in which admission is sought.

(b) *Scholastic examinations*—(1) *Required entrance examinations.* Applicants shall qualify in either the College Board's Scholastic Aptitude Tests (SAT) or the American College Testing Program (ACT) examinations, administered nationally on scheduled dates at convenient testing centers. A candidate electing to use the College Board shall take both the mathematics and the verbal section of the SAT. A candidate electing to use the ACT, shall take all the tests, namely, English, Mathematics, Social Sciences and Natural Sciences. Minimum qualifying scores on the entrance examinations will be determined by the Superintendent of the Academy for each entering class prior to any offers of appointment for the particular class. Any score below the minimum on any one section of an examination shall make the nominee ineligible for admission. All examination costs shall be borne by the applicant. Nominees shall take all the required examinations by the February testing date in the year for which they seek appointment, unless the Academy's Admissions Office grants special authorization to take later examinations.

(2) *Forwarding test results.* Candidates shall be responsible for requesting the testing services to submit their scores directly to the Academy.

(3) *Test information.* Information on the entrance examinations may be obtained from—

The candidate's high school guidance officer, or,

College Board, P.O. Box 592, Princeton, NJ 08540; or,

College Board, P.O. Box 1025, Berkeley, CA 94701; or,

American College Testing Program, P.O. Box 168, Iowa City, IA 52240.

(c) *Prior Scholastic Record.* Applicants shall demonstrate scholastic achievement by having attained a relatively high standing in relation to their fellow students and by having shown proficiency in mathematics and science courses. With respect to applicants who completed high school at least one year before applying for admission to the Academy, consideration will be given to satisfactory college level study or any special study undertaken to strengthen their academic backgounds, particularly in respect to determining whether such supplementary academic activity offsets any deficiency in high school scholastic records.

(d) *Waivers.* No waivers of scholastic requirements will be granted.

§ 310.56 Physical requirements.

(a) *Physical standards.* (1) A candidate shall meet the physical requirements prescribed by the Department of the Navy for appointment as Midshipman, USNR (including the Merchant Marine Reserve, USNR) and the requirements prescribed by the U.S. Coast Guard for original licensing as a third mate and third assistant engineer. All candidates shall have color perception and refractive error within the limits prescribed by the Department of the Navy or by the U.S. Coast Guard, whichever are higher.

(2) The requirement to meet these standards is a continuing one and shall apply through graduation from the Academy. Failure to meet the standards while attending the Academy is grounds for, and may lead to disenrollment. Individuals who have completed at least two years of study and, as a result of an accident, illness or other cause (during official duty), fail to meet this requirement may be permitted to remain at the Academy at the discretion of, and under conditions set by, the Administrator. Those individuals permitted to remain through graduation will agree to fulfill aspects of the service obligation which they are capable of, as deemed appropriate by the Administrator.

(b) *Qualifying physical examinations.* All candidates for the Academy shall have a physical and dental examination conducted by a service academy examining facility designated by the Service Academies Central Medical Review Board. The required physical examination shall occur within 1 year preceding the date of admission to the Academy. Although there is no charge for such examination, all expenses (including travel, meals and hotel accommodations) incurred in obtaining such examination shall be borne by the applicant. Candidates may be subject to reexamination upon reporting to the Academy and at any time while attending the Academy.

(c) *Physical reexamination.* A candidate who is rejected for failure to meet the physical requirements may request either a reevaluation of the examination results or a reexamination. A midshipman failing to meet the physical requirements while attending the Academy is entitled to make the same request.

(d) *Waivers.* No waivers of physical requirements will be granted.

§ 310.57 Application and selection of midshipmen.

(a) *Application.* All candidates shall submit an application for admission to the Academy's Admissions Office. Prospective candidates also should submit an application, but are not considered official candidates until their nominations are received. Candidates shall submit with their applications an official transcript and personality record from the candidate's high school and, if applicable, such records from any school attended after high school graduation. Application forms are available upon request by writing to the Admissions Office at the Academy.

(b) *Selection of Midshipmen.* Selection of midshipmen for appointment to fill vacancies allotted to the various States and other locations, as specified in § 310.53(b) (1) and (2) of this subpart, shall be in order of merit. The order of merit shall be determined on the scores of the required entrance examinations, on assessment of the academic background of the individual and on such other factors as are considered by the Academy to be effective indicators of motivation and the probability of successful completion of training at the Academy. No preference shall be granted in selecting individuals for appointment because one or more members of their immediate families are alumni of the Academy.

(c) *Notification of selection.* Results of the selection process will be made known about May 1 each year. The Academy shall advise each candidate and his or her nominating official of his or her status as a principal candidate, as an alternate candidate or as an unqualified candidate. Alternates will replace principal candidates who decline appointment or fail to meet the physical requirements or the security and suitability investigation.

(d) *Service obligation agreement.* Each candidate selected for appointment to the Academy after April 1, 1982, who is a citizen of the United States, shall sign a service obligation contract as a condition of admission. The contract is prescribed in § 310.58 of this subpart.

(e) *Reporting to the Academy.* Candidates who accept offers of appointment shall, pursuant to instructions issued by the Academy, report to the Academy on a specified date in mid-July for orientation and induction.

(f) *Oath.* Each midshipman who is a citizen of the United States shall take the following oath of office at the Academy:

"I, ————, having been appointed a midshipman to the U.S. Merchant Marine Academy, accept appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will comply with all the regulations of the U.S. Merchant Marine Academy; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

(g) *Birth Certificate.* Each candidate shall present a certificate of birth authenticated by an authorized official.

§ 310.58 Service obligation for students enrolled after April 1, 1982.

(a) *Form of service obligation contract.* The service obligation contract shall obligate each midshipman who is a citizen and who enters the Academy after April 1, 1982, to:

(1) Complete the course of instruction at the Academy, unless sooner separated by the Academy;

(2) Fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy;

(3) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from the Academy;

(4) Apply for an appointment as, accept any tendered appointment as and serve as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the United States Coast Guard Reserve, or any other Reserve component of an armed force of the United States for at least six (6) years following the date of graduation from the Academy;

(5) Serve the foreign and domestic commerce and the national defense of the United States for at least five (5) years following the date of graduation from the Academy:

(i) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Administrator), if the Administrator determines that service under paragraph (a)(5)(i) of this section is not available;

(iii) As a commissioned officer on active duty in an armed force of the United States or NOAA; or

(iv) By combining the services specified in paragraphs (a)(5)(i), (ii) and (iii) of this section; and,

(6) Submit periodic reports to the Administration to establish compliance with all the terms of the contract.

(b) *Service as a merchant marine officer.* For purposes of the service obligation, a satisfactory year of service on vessels as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

(c) *Marine-related employment.* (1) Graduates who do not meet the sea service requirement in paragraph (b) of this section and who claim employment in a United States maritime-related industry, profession or marine science as meeting all or part of the service obligation under paragraph (a)(5) of this section and the serve obligation contract shall submit evidence to the Administration that they have consientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence submitted, and other information available to the Administration, shall be considered in any finding. In view of current and projected employment opportunities afloat, the Administrator will grant the shoreside employment option infrequently and only on the basis of comrehensive evidence.

(2) The Administrator may consider positions of operational, management or administrative responsibility, including, but not limited to, the following marine-related categories, to be under the provisions of § 310.58(a)(5)(ii) of this subpart and

the service obligation contract: Civilian employment in Federal and State agencies related to maritime affairs; steamship companies; stevedoring companies; vessel chartering and operations; cargo terminal opeations; naval architecture; shipbuilding and repair; municipal and State port authorities; and port development, marine engineering, and tug and barge companies.

(d) *Reporting requirements.* Each graduate shall submit an employment report to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, DC 20590, on or before July 1 of each year following his or her year of graduation for five consecutive years. Each graduate granted a deferment to engage in a graduate course of study shall submit annual reports for the extension of the five (5) year obligation period resulting from such deferment. The Administration shall provide reporting forms. However, non-receipt of such form shall not exempt a graduate from submitting employment information as required by this paragraph. The reporting requirements for graduates will not become effective until there are Academy graduates subject to this provision, no earlier than 1986. The specific form to be developed by the Administration will be subject to approval by the Office of Management and Budget.

(e) *Breach of contract.* (1) If the Administration determines that any individual who has attended the Academy for not less than 2 years has failed to complete the course of instruction at the Academy, the Secretary of the Navy may order that individual to active duty in the U.S. Navy, at a rating determined by the U.S. Navy, to serve for a period of time not to exceed 2 years. The Administration shall submit the list of those who have breached their service obligation contract to the Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508.

(2) If the Administration determines that a graduate of the Academy has broken his or her agreement under paragraphs (a)(2) through (6) of this section and the service obligation contract, such individual may be ordered to active duty to serve a period of time not less than three (3) years and not more than the unexpired portion of the service required under said subparagraph (5) and the contract. The Administrator, in consultation with the Department of Defense and the U.S. Coast Guard, shall determine in which service the graduate shall serve and the period of time. The branch of service in which the individual serves shall determine the rank or rating of the individual.

(f) *Waivers.* The Administrator shall have the discretion to grant waivers of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, DC 20590.

(g) *Deferments.* In exceptional cases, the Administration may grant a deferment of all or part of the agreement under paragraph (a)(5) of this section and the service obligation contract, for a period not to exceed 2 years, only for graduates considered to have superior academic and conduct records while at the Academy and only for the purpose of entering a marine or maritime-related graduate course of study approved by the Administrator; *Provided,* That any deferment of service as a commissioned officer under paragraph (a)(5)(iii) of this section and the service obligation contract shall be subject to the sole approval of the Secretary of the department which has jurisdiction over such service (including the Secretary of the department in which the U.S. Coast Guard is operating and the Secretary of Commerce with respect to NOAA). A graduate shall make application for such deferment through the Superintendent of the Academy, who shall foward each application, togther with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, DC 20590 for appropriate action.

(h) *Determination of compliance with service obligation contract; deferment; and review procedures.* (1) A designated official of the Administration shall:

(i) Determine whether a student or graduate has breached his or her service obligation contract;

(ii) Grant or deny a deferment of the service obligation, except for obligations otherwise a part of the graduate's commissioned officer status; and,

(iii) Grant or deny a waiver of the requirements of the service obligation contract in cases of undue hardship or impossibility of performance due to accident, illness or other justifiable reason.

(2) A Review Panel, consisting of a representative of the Administration serving as Presiding Official and representatives of the Department of the Navy, NOAA and the U.S. Coast Guard, shall review decisions of the designated official under paragraph (h)(1) of this section upon written request of the student or graduate.

(3) The Administrator shall adopt procedures for the Review Panel. Actual notice of such procedures will be given to each midshipman at the time of enrollment in the Academy.

(4) The decisions of the Review Panel shall be final.

§ 310.59 Courses of instruction.

(a) *At Academy.* Three major curriculums are offered: Nautical Science, for the preparation of deck officers; Marine Engineering, for the preparation of engineering officers; and the Dual License Program, a combined course which leads to licenses in both specialities. All midshipmen who are citizens shall take naval science courses prescribed by the Department of the Navy. All curriculums include general education courses and electives.

(b) *Sea year.* Midshipmen spend one-half of their sophomore (third class) year and one-half of their junior (second class) year training at sea aboard one or more merchant vessels. In addition to practical shipboard assignments, midshipmen are required to complete written study assignments incorporating material from the major segments of the Academy curriculums.

§ 310.60 Training on subsidized vessels.

All operators of subsidized merchant vessels, in accordance with contractual arrangements, are required to employ for training at least two midshipmen as assigned by the Superintendent of the Academy, which employment shall be in accordance with the following provisions.

(a) *Work assignments.* All practical work assignments for midshipmen shall be in accordance with courses prescribed by the Superintendent of the Academy.

(b) *Working hours.* In order to permit midshipmen to complete their academic assignments, vessel employers shall not require midshipmen to work more than 8 hours each day. Midshipmen shall devote at least 3 hours of their own time each day to study.

(c) *Pay.* Midshipmen shall receive pay while employed aboard merchant vessels directly from the steamship company employers at the same rate received by cadets and midshipmen at the other Federal academies. A change in the rate of pay for midshipmen at the Academy shall occur after a change in the rate of pay for cadets/midshipmen at the other Federal academies and shall be effective either on June 15th or on December 15th of the same calendar year, whichever occurs first. While aboard ship, they shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers. The steamship company employers shall also pay the midshipmen such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel in which the midshipmen are employed.

(d) *Berthing and messing.* While aboard ship, midshipmen shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers.

(Secs. 204(b) and 1301-1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b); and 1295 through 1295g); Pub. L. 96-453; Pub. L. 97-31; 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981); EO 12387 (47 FR 44981, Oct. 13, 1982)

[47 FR 21812, May 20, 1982, as amended at 52 FR 21534, June 8, 1987]

§ 310.61 Training on other vessels and by other facilities or agencies.

The Administrator may arrange for training of midshipmen on Government-owned vessels, in cooperation with other governmental and private agencies, and on other vessels documented under the laws of the United States if the owner of such vessel cooperates in such use. Midshipmen may be assigned for training in shipyards, plants, and industrial and educational organizations for instructional purposes only.

§ 310.62 Allowances and expenses; required deposit.

(a) *Items furnished.* Each midshipman shall receive: Free tuition, quarters and subsistence; limited medical and dental care; and certain travel expenses, in accordance with chapter 5, part A, of the Joint Travel Regulations For Members Of Uniform Services, Vol. 1 (U.S. Department of Defense publication, Serial No. 0516-LP-255-0265), while traveling under official Academy orders.

(b) *Required Deposit.* Prior to admission to the Academy, each midshipman shall make a specified deposit, as established by Academy regulations, to help defray the cost of items and services generally of a personal nature which are not provided by the Academy. Additional deposits, as prescribed in Academy regulations, are required to be made in subsequent years. Failure to make any required deposit will result in denial of admission, suspension or disenrollment.

§ 310.63 Uniforms and textbooks.

The Academy shall supply midshipmen uniforms and textbooks in accordance with Academy regulations.

§ 310.64 Privileges.

(a) Midshipmen may be granted a leave of absence of approximately four (4) weeks after completing each of the first, second and third years of training.

(b) Classes and exercises are suspended on New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and such other days as may be designated by the President as holidays for Federal employees.

(c) Midshipmen may be granted approximately 2 weeks leave during the period which includes Christmas Day and New Year's Day.

(d) Liberty and other privileges are granted to midshipmen meriting them under Academy regulations.

(e) Relatives and friends of midshipmen may visit at the Academy during such ours as the Superintendent may prescribe.

(f) There shall be a Ship's Service Store maintained as a non-appropriated fund activity at the Academy primarily to serve the needs of the midshipmen.

§ 310.65 Graduation.

(a) *Classes enrolled prior to April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the reguired course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Filing for a commission in the USNR (including the Merchant Marine Reserve, USNR); and

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be granted commissions as Ensign, USNR (including the Merchant Marine Reserve, USNR) by the Department of the Navy.

(3) In return for the education received at Government expense, each applicant shall sign an agreement to serve in one of the following categories immediately after graduation:

(i) Sail on his or her license at sea for not less than six (6) months each year for three (3) consecutive years; or

(ii) Sail on his or her license at sea for not less than four (4) months each year for four (4) consecutive years; or

(iii) Apply for and serve on active duty for training on board a U.S. Navy ship for a minimum period of thirty (30) consecutive days each year for a period of three (3) consecutive years, and be either employed ashore for the balance of each year in some phase of the maritime industry or engaged in full-time graduate studies related to the maritime field; or

(iv) Apply for and serve on full-time active duty as a commissioned officer in a uniformed service of the United States for a period of 3 consecutive years.

(b) *Classes enrolled after April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Application for an appointment, and acceptance if tendered of an appointment, as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the U.S. Coast Guard Reserve, or any other Reserve component of an armed force of the United States; and,

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be commissioned as a reserve officer in an armed force as described in paragraph (b)(1) of this section.

(3) The service obligation incurred by graduates is prescribed in § 310.58 of this subpart.

§ 310.66 Foreign students.

(a) *Appointments from the Trust Territory of the Pacific Islands.* The Administrator may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy. Not more than 4 such individuals may receive instruction at any one time. Residents of the Trust Territory of the Pacific Islands are neither citizens nor nationals of the United States.

(b) *Appointments from the Northern Mariana Islands.* The Governor of the Northern Mariana Islands may nominate individuals for one position each year allocated to residents of the Northern Mariana Islands. Such residents are neither citizens nor nationals of the United States.

(c) *Appointments from nations located in the Western Hemisphere.* The President may designate individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(d) *Appointments from nations other than the United States.* In addition to the appointments under paragraphs (a), (b) and (c) of this section, the Administrator, with the approval of the Secretary of State, may permit individuals from any nations other than the United States to receive instruction at the Academy. Not more than 30 such individuals may receive instruction at any one time.

(e) *Candidate Sponsors.* A representative of the Administration or a diplomatic representative of the United States in the candidate's country of residence will be designated as the Candidate's Sponsor. It will be the responsibility of the Candidate's Sponsor to act as liaison with the appropriate officials of the candidate's country of residence and to coordinate all activities, including funding arrangements, entrance examinations, medical examinations, country clearances travel papers, transportation to the Academy, obtaining the necessary designation by the Department of the Interior in the case of candidates from the Trust Territory of Pacific Islands under paragraph (a) of this section, the nomination of the Governor of the Northern Mariana Islands under paragraph (b) of this section, the nomination of a designee of the President in the case of candidates from nations located in the Western Hemisphere under paragraph (c) of this section, and the approval of the Department of State in the case of candidates from nations other than the United States under paragraph (d) of this section. In addition, the Candidate's Sponsor shall furnish to the Admissions Office of the Academy a report as to the candidate's proficiency in the use of idiomatic English.

(f) *Admissions Procedure*—(1) *Applications.* Applications for enrollment of foreign students shall be processed through the appropriate diplomatic channels of the applicant's country and the appropriate offices in the United States Departments of State or of the Interior, whichever is applicable. Applications shall reach the appropriate office of the United States Government by January 1 of the year in which admission is sought. After endorsement by the authorized official of the United States Government, the application will be forwarded promptly to the Academy's Admissions Office.

(2) *Qualifications.* Each candidate shall:

(i) Be a bona fide citizen of the country transmitting the application and meet the requirements as to age and character set forth in § 310.54 of this subpart;

(ii) Possess the physical qualifications, specified in § 310.56 of this subpart, and undergo a physical examination as arranged by the Academy's Admissions Office;

(iii) Be proficient in reading, writing and speaking idiomatic English; and,

(iv) Satisfy the following scholastic requirements:

(A) Meet the minimum qualifying scores on the entrance examinations as specified in § 310.55 of this subpart. When available, special foreign language College Board examinations may be substituted for the College Board or American College Testing Program examinations. Detailed certificates covering schoolwork of foreign students are required. Transcripts shall be submitted in the English language.

(B) Submit a certificate from his or her Government that he or she is conversant with the literature of his or her native country and that he or she has completed a course in the literature of his or her native language generally equivalent to two (2) years of secondary schoolwork in literature in the United States. In lieu of this certificate, a candidate may produce evidence of having acquired the units for literature from accredited United States schools.

(g) *Cost of instruction.* Students admitted to the Academy pursuant to paragraphs (a), (b) and (c) of this section shall be subject only to the same fees as are paid by citizen midshipmen. The cost of instruction (including the same allowances as received by midshipmen at the Academy appointed from the United States) for students admitted to the Academy under paragraph (d) of this section must be reimbursed to the Administrator by the nation from which the student comes. Such reimbursement shall be the incremental cost of providing the instruction to each of such foreign students (including the cost of allowances). The amount of reimbursement shall be established by the Academy separately for each entering class and each upper class prior to January 1 of the year in which the academic year begins and will be payable annually in advance of commencement of the academic year. Instructions as to payment procedures will be provided with the statement of the amount to be reimbursed. Students admitted to the Academy pursuant to paragraph (d) of this section shall pay the same fees paid by citizen midshipmen.

(h) *Uniforms, textbooks and allowances.* The Academy shall provide to foreign students receiving instruction at the Academy all required uniforms and textbooks and allowances for transportation as are provided to citizen midshipmen

(i) *Rules and regulations.* Subject to such exceptions as shall be jointly agreed to by the Administrator and the Secretary of the Interior with respect to individuals from the Trust Territory of the Pacific Islands, foreign students, including students from the Northern Mariana Islands, receiving instruction at the Academy shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduation as citizen midshipmen; but such persons shall not be entitled to hold any license authorizing service on any merchant vessel of the United States solely by reason of graduation from the Academy.

(j) *Oath.* In lieu of the oath of allegiance to the United States, a substitute oath shall be required of students who are not citizens of the United States, as follows:

"I, ————, a citizen of ————, aged — years and — months, having been appointed to receive instruction at the U.S. Merchant Marine Academy, do solemnly swear (or affirm) to comply with all regulations of the U.S. Merchant Marine Academy and to give my utmost efforts to accomplish satisfactorily the required curriculum with the full knowledge that I shall be disenrolled from the U.S. Merchant Marine Academy if deficient in conduct, health or studies."

§ 310.67 Academy regulations.

The Superintendent of the Academy is delegated authority to issue all regulations necessary for the accomplishment of the Academy's mission.

SUBCHAPTER I-A—NATIONAL SHIPPING AUTHORITY

PART 315—AGENCY AGREEMENTS

Sec.
1. Definitions.
2. Service Agreements.
3. Addendum to GAA 3-19-51.

AUTHORITY: 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply 49 Stat 2015, as amended, 60 Stat. 49, as amended; 46 U.S.C. 1242, 50 U.S.C. App. 1744.

Section 1. Definitions.

(a) *General Agent.* A General Agent is any person, firm or corporation designated as such under a standard form of Service Agreement to manage and conduct the business of vessels of which the United States is owner or owner pro hac vice.

(b) *Agent.* An Agent is any person, firm or corporation designated as such under a standard form of Service Agreement to conduct the business of vessels of which the United States is time charterer.

(c) *Berth Agent.* A Berth Agent is any person, firm or corporation designated as such under a standard form of Service Agreement to conduct the business of vessels (which have been assigned to an Agent or General Agent) in a specific service or trade.

(d) *Sub-Agent.* A Sub-Agent is any person, firm or corporation who is appointed by a General Agent, Agent or Berth Agent to perform any of the functions of a General Agent, Agent or Berth Agent.

(e) *Continental United States.* The "continental United States" as used in this order and other NSA orders shall be deemed to include the forth-eight States which were States of the United States of America on or before January 2, 1959, and the District of Columbia.

[25 FR 4744, May 28, 1960. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. Service Agreements.

The standard forms of Service Agreements to be entered into by the United States of America, acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, with shipping companies, appointing them as General Agents to manage and conduct the business of vessels of which the United States is owner or owner pro hac vice, or as Berth Agents, shall be as follows:

(a) *General Agency Agreement.*

GAA 3-19-51
(Amendment 3-69)

Contract MA——

SERVICE AGREEMENT FOR VESSELS OF WHICH THE UNITED STATES REPRESENTED BY THE MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION IS OWNER OR OWNER PRO HAC VICE

This agreement, made as of ————, 19—, between the United States of America (herein called the "United States") acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, and, ———— a corporation organized and existing under the laws of ———, (herein called the "General Agent"):

Witnesseth: That in consideration of the reciprocal undertakings and promises of the parties herein expressed:

ARTICLE 1. *Appointment of General Agent.* The United States appoints the General Agent as its agent and not as an independent contractor, to manage and conduct the business of vessels assigned to it by the United States from time to time and accepted by the General Agent.

ART. 2. *Acceptance of appointment.* The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States, in accordance with such directions, orders or regulations not inconsistent with this Agreement as the United States has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

ART. 3. *Duties of the General Agent.* For the account of the United States, in accordance with such directions, orders, regulations, forms and methods of supervision and inspection as the United States may from time to time prescribe (or in the absence of such directions, orders, regulations, forms and methods of supervision and inspection, in accordance with reasonable commercial practices and/or the use of customary commercial forms), in an economical and efficient manner, and exercising due diligence to protect and safeguard the interests of the United States in connection with the duties prescribed in this Agreement and without prejudice to its rights under Article 6 hereof, the General Agent (solely as agent of the United States and not in any other capacity) shall:

(a) Conduct the business of the vessels including, but not limited to, all matters with respect to voyages, cargoes, mail, passengers, persons to be carried, charters, rates of freight and charges; and procure or provide all services incident thereto including, but not limited to, stevedoring and other cargo handling, port activities, wharfage and dockage, pilotages, canal transits and services of sub-agents, brokers and consulates.

(b) Collect, deposit, remit, disburse and account for all monies due the United States arising in connection with activities under or pursuant to this Agreement, and to the extent disbursements made by the General Agent pursuant to this Agreement are recoverable from insurance, the General Agent shall take such steps as may be appropriate to effect such recovery for the account of the United States.

(c) Equip, victual, supply and arrange for the repair of the vessels covering hull, machinery, boilers, tackle, apparel, furniture, equipment and spare parts, and including maintenance and voyage repairs and replacements, as may be necessary to maintain the vessels in an efficient state of repair and condition; and cooperate with representatives of the United States in making any inspections or investigations that the United States may deem desirable.

(d) Procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the manning, navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions of the General Agent's collective bargaining agreements, if any. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

(e) Issue or cause to be issued to passengers customary passenger tickets and to shippers customary shipping documents, freights contracts and bills of lading. All bills of lading shall be issued by the General Agent or its agents as agent for the Master and the signature clause may provide substantially that the General Agent makes no warranty or representation as to the authority of the United States or the Master to enter into the agreement, and that the General Agent assumes no liability with respect to the goods described therein or the transportation thereof.

(f) Furnish and maintain during the period that any vessel is assigned and accepted by the General Agent under this Agreement, at its own expense, a bond with sufficient surety in such amount as the United States shall determine such bond to be approved by the United States as to both sufficiency of surety or sureties and form and to be conditioned upon the due and faithful performance of all and singular the covenants and agrcements of the General Agent contained in this Agreement, including without limitation of the foregoing the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the General Agent or its sub-agent. The General Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of the cash value of the penalty of the bond under an agreement satisfactory in form to the United States.

No monies or slop chest property of the United States shall be advanced or entrusted by the General Agent to a Master, purser or any other member of the ship's personnel unless such person is under a bond indemnifying the United States against loss of such monies or property caused solely or in part by the dishonesty or lack of care of any such person in the performance of the duties of any position covered by the bond.

(g)(1) Keep books, records and accounts (which shall be the property of the United States) relating to the activities, maintenance and business of the vessels covered by this Agreement in such form and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of activities, special reports, memoranda of any facts and transactions which, in the opinion of the United States affect the results, or the performance of transactions or activities, under this Agreement, and, whenever the General Agent employs any related, affiliated or holding company of the General Agent to render any services or to furnish any stores, supplies, equipment, provisions, materials or facilities which are for the account of the United States under the terms of this Agreement, the General Agent shall also, as a condition to such employment, obtain from such related or affiliated or holding company its agreement to comply with the requirements aforesaid and to make available to the

United States for examination and audit its books, records and accounts, to the extent that such services affect the results, or the performance of transactions or activities, under this Agreement.

(h) Select its sub-agents, but any sub-agency agreement shall be terminated by the General Agent whenever the United States shall so direct.

In the event that any vessel assigned to the General Agent under this Agreement is allocated by the United States for use—

(1) In a service in which another operator (a United States citizen) maintained a berth operation with privately owned United States flag vessels on June 25, 1950, and is recognized by the United States as a regular berth operator in such services, or

(2) In a trade, not served with privately owned United States flag vessels on June 25, 1950, or not served on the date of such allocation by a United States citizen who is deemed by the United States qualified to conduct an efficient berth operation, where the United States deems another operator to be qualified as an operator in such trade, such regular or other operator, as the case may be, may be designated by the United States as the Berth Agent of the United States to conduct such of the business of the vessel in such service or trade as the United States may require.

During any period while any such vessel is assigned to a Berth Agent, the General Agent shall be under no obligation to perform with respect to such vessel duties which are imposed upon the Berth Agent under the terms of the Berth Agency Agreement prescribed by the United States:

(i) Upon termination of this Agreement, turn over to the United States at times and places to be fixed by the United States, all vessels and other property of whatsoever kind then in the custody of the General Agent pursuant to this Agreement and upon such action the United States may collect directly, or by such agent or agents as it may appoint, all freight monies or other debts remaining unpaid provided that the General Agent shall, if required by the United States, adjust, settle and liquidate the business of the vessels assigned hereunder.

ART. 4. *Compensation.* At least once a month the United States shall pay to the General Agent compensation for the General Agent's services hereunder, and, after redelivery of the vessels assigned hereunder, shall also pay to the General Agent compensation for services required thereafter. All such compensation shall be in such fair and reasonable amount as the United States shall from time to time determine by National Shipping Authority Order. Such compensation shall be deemed to cover the General Agent's administrative and general expense (as presently itemized in General Order No. 22 of the Maritime Administration) and also fees to sub-agents, branch houses and customs brokers, charges for postage and petties, and communication expenses, in the continental United States, advertising expenses, taxes (other than taxes for which the General Agent is credited under Article 5 hereof), and any other expenses which are not directly applicable to the activities, maintenance and business of the vessels assigned hereunder.

ART. 5. *Disbursements.* The United States shall advance funds to the General Agent to provide for, and the General Agent shall receive credit for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, excepting the items of expense as are deemed to be covered by the compensation provided for in Article 4 hereof, provided that the General Agent shall receive credit for sales and similar taxes or foreign taxes of any kind to the extent classifiable as vessel operating expense under said General Order No. 22, if the General Agent shall have used due diligence to secure immunity from such taxation. The United States shall also advance funds to the General Agent to provide for, and the General Agent shall receive credit for, all crew expenditures accruing during the term hereof in connection with the vessels assigned hereunder, including without limitation, expenditures on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, internment, travel, loss of personal effects, maintenance and cure, vacation allowances, damages or compensation for death or personal injury or illness, insurance premiums, Social Security taxes, state unemployment insurance taxes and contributions made by the General Agent to a pension or welfare fund with respect to the period of this Agreement and in accordance with a pension or welfare plan in effect on the effective date of this Agreement or which, pursuant to collective bargaining agreements, may become effective during the period of this Agreement with respect to the officers and members of the crew of said vessels who are or may become entitled to benefits under such plan, or any other payment required by law.

The United States may deny credit to the General Agent in whole or in part, as the United States may deem appropriate, for payment of expenses which are found to have been made in wilful contravention of any outstanding instructions or which are found to have been clearly improvident or excessive.

Any monies or slop chest property of the United States advanced or entrusted to bonded persons by the General Agent which are lost by reason of a casualty to the vessel on which the money so advanced or slop chest property so entrusted is carried shall in the event of such loss be considered an expenditure of the General Agent and credit shall be allowed to the General Agent in accordance with this Article 5.

Art. 6. *Insurance and indemnification.* (a) The United States shall, without cost or expense to the General Agent, procure or provide insurance without deductibles, franchises or average warranties against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder including, but without limitation, marine, war and P & I risks, sabotage and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property.

The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims. Marine and war risk insurance with respect to each vessel assigned hereunder against protection and indemnity, general average, salvage and collision liabilities shall be without limit, as between the United States and the General Agent, as to the amount of any claim or the aggregate of any claims thereunder. The United States at its election may assume all or any of the foregoing risks or may write all or any such insurance in its own fund, pursuant to a duly executed policy or policies. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to any of the foregoing risks. All insurance hereunder shall cover both the United States and the General Agent, when acting hereunder or as sub-agent of another General Agent of the United States with respect to vessels assigned by the United States to such other General Agent.

(b) To the extent not covered by insurance or assumed by the United States, as required by this Article 6, the United States shall indemnify, and hold harmless and defend the General Agent against any and all claims and demands (including costs and reasonable attorneys' fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature whether or not such claim or damage is caused by the negligence of the General Agent or the vessel, and by whomsoever asserted, for injury to persons or property arising out of or in any way connected with the activities, maintenance or business of said vessels or the performance by the General Agent of any of its obligations hereunder, including, but not limited to, any and all claims and demands by passengers, troops, gun crews, crew members, shippers, third persons, or other vessels and including but not limited to claims for damages for injury to or loss of property, cargo or personal effects, claims for damages for personal injury or loss of life, and claims for maintenance and cure.

(c) In view of the extraordinary wartime or emergency conditions under which vessels will be operated hereunder, the General Agent shall be under no responsibility or liability to the United States for loss or damage to the vessels assigned hereunder arising out of any error of judgment or any negligence on the part of any of the General Agent's officers, employees, or otherwise. If, however, such loss or damage is directly and primarily caused by wilful misconduct of principal supervisory shoreside personnel or by gross negligence of the General Agent in the procurement of licensed officer or in the selection of principal supervisory shoreside personnel, the General Agent shall be held liable for such loss or damage unless it is required by this Article 6 to be covered by insurance or assumed by the United States. The liability of the General Agent under this paragraph (c) for any such loss or damage shall in no event exceed the sum of $500,000 in respect of any one vessel.

(d) The General Agent shall be under no liability to the United States of any kind or nature whatsoever in the event that the General Agent should fail to obtain officers or crews for the vessels assigned hereunder, or fail to arrange for the fitting out, refitting, maintenance or repair of said vessels, or fail to perform any other service hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the General Agent whether or not of the same or similar nature, or should do or fail to do any act in reliance upon instructions of military or naval authorities.

(e) Whenever the General Agent is performing any services of the nature set forth in this Agreement as sub-agent for another General Agent of the United States with respect to vessels assigned by the United States to such other General Agent, the provision of this Article 6 shall cover such sub-agency services.

Art. 7. *General average.* In the event of general average involving vessels assigned to the General Agent under this Agreement, the General Agent shall comply fully with all instructions issued by the United States in that connection including instructions as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements, accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for and general average allowances to the General Agent in such cases shall be fixed by the adjuster, subject to approval by the United States and paid to and retained by the General Agent.

ART. 8. *Salvage.* Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States including the vessels hereunder shall be made by the United States. The General Agent shall furnish the United States with full reports and information on all salvange services rendered.

ART. 9. *Related services.* (a) Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, repairs, or facilities hereunder shall be submitted to the United States for approval. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny credit hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny credit, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm or corporation in which the General Agent, or any related company of the General Agent, or any officer or director of the General Agent or any employee of the General Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director, or employee, or any officer or director of any related company of the General Agent or any member of the immediate family of an officer or director of any related company of the General Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company," used to indicate a relationship with the General Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the General Agent. The term "control" (including the terms "controlled by" and "under common control with") as used herein means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the General Agent (or related company), whether through ownership or voting securities, by contract or otherwise.

(b) The United States shall, when it may legally do so, have the advantage of any existing, or future, contracts of the General Agent for the purchase or rental of materials, fuel, supplies, facilities, services or equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the General Agent provided that any financial loss or disadvantage to the General Agent shall be compensated for in such amount as may be determined by the United States.

(c) Notwithstanding any other provision of this Agreement, the United States, by separate agreement, may contract with the General Agent to perform stevedoring, terminal, ship repair or similar services for the vessels assigned hereunder, in which event the General Agent shall have the rights, benefits and the obligations and responsibilities provided in such agreement.

ART. 10. *Delegation of authority.* Wherever and whenever herein any right, power or authority is granted or given to the United States, such right, power or authority may be exercised in all cases by the National Shipping Authority or such agent or agents as the United States may appoint, and the act or acts of such agent or agents when taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the General Agent may rely upon the instructions and directions of the Director, National Shipping Authority, his officers and responsible employees, or any person or agency authorized by him. Wherever practicable, instructions and directions to the General Agent shall be in writing and oral instructions or directions given shall be confirmed promptly in writing. No directions, orders or regulations shall have retroactive effect without the written consent of the General Agent.

ART. 11. *Warranty against contingent fees.* The General Agent warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage or contingent fee.

ART. 12. *Nondiscrimination in employment.* During the performance of this agreement, the General Agent agrees as follows:

(a) The General Agent will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The General Agent will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The General Agent agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the National Shipping Authority setting forth the provisions of this nondiscrimination clause.

(b) The General Agent will, in all solicitations or advertisements for employees placed by or on behalf of the General Agent, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The General Agent will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the National Shipping Authority, advising the labor union or workers' representative of the General Agent's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The General Agent will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The General Agent will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the National Shipping Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the General Agent's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the General Agent may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The General Agent will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The General Agent will take such action with respect to any subcontract or purchase order as the National Shipping Authority may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the General Agent becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the National Shipping Authority the General Agent may request the United States to enter into such litigation to protect the interests of the United States.

ART. 13. *Members or delegates of Congress.* No person elected or appointed a Member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in section 206, Title 18, U.S.C. The General Agent shall not employ any Member of Congress, either with or without compensation, as an attorney, agent, officer or director.

ART. 14. *Right of Comptroller General to examine books and records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the General Agent or any of its subcontractors engaged in the performance of and involving transactions related to this Agreement or any sub-contracts thereunder.

ART. 15. *Termination.* (a) The United States shall have the right to terminate this Agreement at any time as to any or all vessels assigned to the General Agent and to assume control forthwith of any or all said vessels upon fifteen (15) days' written or telegraphic notice unless action is required at an earlier date to protect the interest of the United States.

(b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the General Agent shall have the right to terminate this Agreement as to any or all vessels assigned to the General Agent, but unless otherwise agreed, termination by the General Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) No such termination of this Agreement shall relieve either party of liability to the other in respect of matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

(d) This Agreement may be terminated, modified or amended at any time by mutual consent.

ART. 16. *Duration of agreement.* This Agreement is effective as of the day and year of the first acceptance by the General Agent of any vessel assigned hereunder and shall extend until terminated as herein elsewhere provided.

ART. 17. *Assignment or transfer.* Without the consent of the United States, the General Agent shall not sell, assign or transfer, either directly or indirectly, or through any reorganization, merger or consolidation, this Agreement or any interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 3 hereof.

ART. 18. *Additional or substitute compensation and reimbursement.* The General Agent shall also be entitled to payment or credit for any service loss, cost or expense, whether or not specifically provided for, or excepted herein, if, and to the extent that such payment or credit is found by the Director, National Shipping Authority, in his sole discretion, to be fair and equitable and in accordance with the basic principles or intent of this General Agency Agreement.

ART. 19. *Headnotes.* The use of headnotes at the beginning of the articles of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

ART. 20. *Renegotiation.* This Agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this Agreement) shall, in compliance with said section 104, insert the provisions of this article in each subcontract and purchase order made or issued in carrying out this contract.

In witness whereof, the parties hereto have executed this Agreement in triplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION,
Director, National Shipping Authority.
By: ______________________
[CORPORATE SEAL] (Deputy Maritime Administrator)
____
Attest: By: ______________________
____
(Secretary)

(b) *Berth Agency Agreement.*

BAA 10-12-51
(Amendment 3-69) Contract MA ———

SERVICE AGREEMENT BETWEEN THE NATIONAL SHIPPING AUTHORITY AND BERTH AGENTS

Whereas, the United States of America (herein called the "United States") acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, will, from time to time, enter into service agreements (TCA and GAA) with certain companies designating such companies as Agent or General Agent to conduct the business of vessels assigned to such agents by the United States, and

Whereas, when a vessel assigned to an Agent or General Agent is allocated by the United States for use

(1) In a service in which another operator (a United States citizen) maintained a berth operation with privately owned United States flag vessels on June 25, 1950, and is recognized by the United States as a regular berth operator in such service, or

(2) In a trade, not served with privately owned United States flag vessels on June 25, 1950, or not served on the date of such allocation by a United States citizen who is deemed by the United States qualified to conduct an efficient berth operation, where the United States deems another operator to be qualified as an operator in such trade, such regular or other operator, as the case may be, may be designated by the United States as the Berth Agent of the United States to conduct such of the business of the vessel in such service or trade as the United States may require, and

Whereas, the United States has designated ———, a ——— corporation, having its principal place of business at ———, (herein called the "Berth Agent") as eligible for appointment as a Berth Agent.

Now, therefore, the United States and the Berth Agent in consideration of the reciprocal undertakings and promises of the parties herein expressed, agree that the following provisions shall govern the rights and obligations of the United States and the Berth Agent, while the Berth Agent is performing services as Berth Agent of the United States:

ARTICLE 1. *Appointment of Berth Agent.* The United States appoints the Berth Agent as its agent and not as an independent contractor, to conduct the business of vessels assigned to it by the United States from time to time and accepted by the Berth Agent.

ART. 2. *Acceptance of appointment.* The Berth Agent accepts the appointment and undertakes and promises so to conduct the business for the United States, in accordance with such directions, orders, or regulations not inconsistent with this Agreement as the United States has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States assigned to and accepted by the Berth Agent for that purpose.

Art. 3. *Duties of the Berth Agent.* For the account of the United States, in accordance with such directions, orders, regulations, forms and methods of supervision and inspection as the United States may from time to time prescribe (or in the absence of such directions, orders, regulations, forms and methods of supervision and inspection, in accordance with reasonable commercial practices and/or the use of customary commercial forms), in an economical and efficient manner, and exercising due diligence to protect and safeguard the interests of the United States in connection with the duties prescribed in this Agreement and without prejudice to its rights under Article 5 hereof, the Berth Agent (solely as agent of the United States and not in any other capacity) shall, to the extent not otherwise directed:

(a) Conduct the business of the vessels including, but not limited to, all matters with respect to voyages, cargoes, mail, passengers, persons to be carried, charters, rates of freight and charges; and procure or provide all services incident thereto including, but not limited to, stevedoring and other cargo handling, port activities, wharfage and dockage, pilotages, canal transits and services of sub-agents, brokers and consulates.

(b) Collect, deposit, remit, disburse and account for all monies due the United States arising in connection with activities under or pursuant to this Agreement, and to the extent disbursements made by the Berth Agent pursuant to this Agreement are recoverable from insurance, the Berth Agent shall take such steps as may be appropriate to effect such recovery for the account of the United States.

(c) Issue or cause to be issued to passengers customary passenger tickets and to shippers customary shipping documents, freight contracts and bills of lading. All bills of lading shall be issued by the Berth Agent or its sub-agents as agent for the Master and the signature clause may provide substantially that the Berth Agent makes no warranty or representation as to the authority of the United States or the Master to enter into the agreement, and that the Berth Agent assumes no liability with respect to the goods described therein or the transportation thereof.

(d) Furnish and maintain during the period that any vessel is assigned and accepted by the Berth Agent under this Agreement, at its own expense, a bond with sufficient surety in such amount as the United States shall determine, such bond to be approved by the United States as to both sufficiency of surety or sureties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the Berth Agent contained in this Agreement, including without limitation of the foregoing the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the Berth Agent or its sub-agents. The Berth Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of the cash value of the penalty of the bond under an agreement satisfactory in form to the United States.

No monies of the United States shall be advanced by the Berth Agent to a Master, purser or any other member of the ship's personnel unless such advance is authorized by the General Agent and is made by the Berth Agent acting as sub-agent of the General Agent, and such Berth Agent shall not be liable for monies advanced with such authorization.

(e)(1) Keep books, records and accounts (which shall be the property of the United States) relating to the activities and business of the vessels covered by this Agreement in such form and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of activities, special reports, memoranda of any facts and transactions, which, in the opinion of the United States, affect the results, or the performance of transactions or activities, under this Agreement, and, whenever the Berth Agent employs any related, affiliated or holding company of the Berth Agent to render any services or to furnish any stores, supplies, equipment, provisions, materials or facilities which are for the account of the United States under the terms of this Agreement, the Berth Agent shall also, as a condition to such employment, obtain from such related or affiliated or holding company its agreement to comply with the requirements aforesaid and to make available to the United States for examination and audit its books, records and accounts, to the extent that such services affect the results, or the performance of transactions or activities, under this Agreement.

(f) Select its sub-agents, but any sub-agency agreement shall be terminated by the Berth Agent whenever the United States shall so direct.

(g) Upon termination of this Agreement, turn over to the United States at times and places to be fixed by the United States, all property of whatsoever kind then in custody of the Berth Agent pursuant to this Agreement, and upon such action the United States may collect directly, or by such agent or agents as it may appoint, all freight monies or other debts remaining unpaid, provided that the Berth Agent shall, if required by the United States, adjust, settle and liquidate the business of the vessels assigned hereunder.

ART. 4. Compensation. At least once a month the United States shall pay to the Berth Agent conpensation for the Berth Agent's services hereunder, and, after redelivery of the vessels assigned hereunder, shall also pay to the Berth Agent compensation for services required thereafter. All such compensation shall be in such fair and reasonable amount as the United States shall from time to time determine by National Shipping Authority Order. Such compensation shall be deemed to cover the Berth Agent's administrative and general expense (as presently itemized in General Order No. 22 of the Maritime Administration) and also fees to sub-agents, branch houses and customs brokers, charges for postage and petties, and communication expenses, in the continental United States, advertising expense, taxes (other than taxes for which the Berth Agent is credited under Article 5 hereof), and any other expenses which are not directly applicable to the activities and business of the vessels assigned hereunder.

ART. 5. *Disbursements.* The United States shall advance funds to the Berth Agent to provide for, and the Berth Agent shall receive credit for, all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, or equipment as required hereunder, excepting the items of expense as are deemed to be covered by the compensation provided for in Article 4 hereof, provided that the Berth Agent shall receive credit for sales and similar taxes or foreign taxes of any kind to the extent classifiable as vessel operating expense under said General Order No. 22, if the Berth Agent shall have used due diligence to secure immunity from such taxation.

The United States may deny credit to the Berth Agent in whole or in part, as the United States may deem appropriate, for payment of expenses which are found to have been made in wilful contravention of any outstanding instructions or which are found to have been clearly improvident or excessive.

ART. 6. *Insurance and indemnification.* (a) The United States shall, without cost or expense to the Berth Agent, procure or provide insurance without deductibles, franchises or average warranties against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder including, but without limitation, marine, war and P & I risks, sabotage and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property.

The Berth Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims. Marine and war risk insurance with respect to each vessel assigned hereunder against protection and indemnity, general average, salvage and collision liabilities shall be without limit, as between the United States and the Berth Agent, as to the amount of any claim or the aggregate of any claims thereunder. The United States at its election may assume all or any of the foregoing risks or may write all or any such insurance in its own fund, pursuant to a duly executed policy or policies. Neither the United States nor the insurance underwriters shall have any right of subrogation against the Berth Agent with respect to any of the foregoing risks. All insurance hereunder shall cover both the United States and the Berth Agent, when acting hereunder or as sub-agent of another General Agent or Berth Agent of the United States with respect to vessels assigned by the United States to such other General Agent or Berth Agent.

(b) To the extent not covered by insurance or assumed by the United States, as required by this Article 6, the United States shall indemnify, and hold harmless and defend the Berth Agent against any and all claims and demands (including costs and reasonable attorneys' fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature whether or not such claim or demand is caused by the negligence of the Berth Agent or the vessel, and by whomsoever asserted, for injury to persons or property arising out of or in any way connected with the activities, maintenance or business of said vessels or the performance by the Berth Agent of any of its obligations hereunder, including, but not limited to, any and all claims and demands by passengers, troops, gun crews, crew members, shippers, third persons, or other vessels are including but not limited to claims for damages for injury to or loss of property, cargo or personal effects, claims for damages for personal injury or loss of life, and claims for maintenance and cure.

(c) In view of the extraordinary wartime or emergency conditions under which vessels will be operated hereunder, the Berth Agent shall be under no responsibility or liability to the United States for loss or damage to the vessels assigned hereunder arising out of any error of judgment or any negligence on the part of any of the Berth Agent's officers, agents, employees, or otherwise. If, however, such loss or damage is directly or primarily caused by wilful misconduct of principal supervisory shoreside personnel or by gross negligence of the Berth Agent in the selection of principal supervisory shoreside personnel, the Berth Agent shall be held liable for such loss or damage unless it is required by this Article 6 to be covered by insurance or assumed by the United States. The liability of the Berth Agent under this paragraph (c) for any such loss or damage shall in no event exceed the sum of $500,000 in respect of any one vessel.

(d) The Berth Agent shall be under no liability to the United States of any kind or nature whatsoever in the event that the Berth Agent should fail to perform any service hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the Berth Agent whether or not of the same or similar nature, or should do or fail to do any act in reliance upon instructions of military or naval authorities.

(e) Whenever the Berth Agent is performing any services of the nature set forth in this Agreement as sub-agent for another General Agent or Berth Agent of the United States with respect to vessels assigned by the United States to such other General Agent or Berth Agent, the provision of this Article 6 shall cover such subagency services.

ART. 7. *General average.* In the event of general average involving vessels assigned to the Berth Agent under this Agreement, the Berth Agent shall comply fully with all instructions issued by the United States in that connection including instructions as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements, accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for and general average allowances to the Berth Agent in such cases shall be fixed by the adjuster, subject to approval by the United States and paid to and retained by the Berth Agent.

ART. 8. *Salvage.* Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States including the vessels hereunder shall be made by the United States. The Berth Agent shall furnish the United States with full reports and information on all salvage services rendered.

ART. 9. *Related services.* (a) Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, repairs, or facilities hereunder shall be submitted to the United States for approval. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny credit hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny credit, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm or corporation in which the Berth Agent, or any related company of the Berth Agent, or any officer or director of the Berth Agent or any employee of the Berth Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director or employee, or any officer or director of any related company of the Berth Agent or any member of the immediate family of an officer or director of any related company of the Berth Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company," used to indicate a relationship with the Berth Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Berth Agent. The term "control" (including the terms "controlled by" and "under common control with") as used herein means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Berth Agent (or related company), whether through ownership of voting securities, by contract or otherwise.

(b) The United States shall, when it may legally do so, have the advantage of any existing, or future, contracts of the Berth Agent for the purchase or rental of materials, fuel, supplies, facilities, services or equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the Berth Agent provided that any financial loss or disadvantage to the Berth Agent shall be compensated for in such amount as may be determined by the United States.

(c) Notwithstanding any other provision of this Agreement, the United States, by separate agreement, may contract with the Berth Agent to perform stevedoring, terminal, ship repair or similar services for the vessels assigned hereunder, in which event the Berth Agent shall have the rights, benefits and the obligations and responsibilities provided in such agreement.

ART. 10. *Delegation of authority.* Wherever and whenever herein any right, power or authority is granted or given to the United States, such right, power or authority may be exercised in all cases by the National Shipping Authority or such agent or agents as the United States may appoint, and the act or acts of such agent or agents when taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the Berth Agent may rely upon the instructions and directions of the Director, National Shipping Authority, his officers and responsible employees, or any person or agency authorized by him. Wherever practicable, instructions and directions to the Berth Agent shall be in writing and oral instructions or directions given shall be confirmed promptly in writing. No directions, orders or regulations shall have retroactive effect without the written consent of the Berth Agent.

ART. 11. *Warranty against contingent fees.* The Berth Agent warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage or contingent fee.

ART. 12. *Nondiscrimination in Employment.* During the performance of this agreement, the Berth Agent agrees as follows:

(a) The Berth Agent will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Berth Agent will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Berth Agent agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the National Shipping Authority setting forth the provisions of this nondiscrimination clause.

(b) The Berth Agent will, in all solicitations or advertisements for employees placed by or on behalf of the Berth Agent, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Berth Agent will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the National Shipping Authority, advising the labor union or workers' representative of the Berth Agent's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Berth Agent will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Berth Agent will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the National Shipping Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Berth Agent's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Berth Agent may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Berth Agent will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Berth Agent will take such action with respect to any subcontract or purchase order as the National Shipping Authority may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the Berth Agent becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the National Shipping Authority the Berth Agent may request the United States to enter into such litigation to protect the interests of the United States.

ART. 13. *Members or delegates of Congress.* No person elected or appointed a member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in section 206, Title 18, U.S.C. The Berth Agent shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

Art. 14. *Right of Comptroller General to examine books and records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Berth Agent or any of its subcontractors engaged in the performance of and involving transactions related to this Agreement or any subcontracts thereunder.

Art. 15. *Termination.* (a) The United States shall have the right to terminate this Agreement at any time as to any or all vessels assigned to the Berth Agent and to assume control forthwith of any or all said vessels upon fifteen (15) days' written or telegraphic notice unless action is required at an earlier date to protect the interest of the United States.

(b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the Berth Agent shall have the right to terminate this Agreement as to any or all vessels assigned to the Berth Agent, but unless otherwise agreed, termination by the Berth Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) No such termination of this Agreement shall relieve either party of liability to the other in respect of matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

(d) This Agreement may be terminated, modified or amended at any time by mutual consent.

Art. 16. *Duration of agreement.* This Agreement is effective as of the day and year of the first acceptance by the Berth Agent of any vessel assigned hereunder and shall extend until terminated as herein elsewhere provided.

Art. 17. *Assignment or transfer.* Without the consent of the United States, the Berth Agent shall not sell, assign or transfer, either directly or indirectly, or through any reorganization, merger or consolidation, this Agreement or any interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 3 hereof.

Art. 18. *Additional or substitute compensation and reimbursement.* The Berth Agent shall also be entitled to payment or credit for any service, loss, cost or expense, whether or not specifically provided for, or excepted herein, if, and to the extent that such payment or credit is found by the Director, National Shipping Authority, in his sole discretion to be fair and equitable and in accordance with the basic principles or intent of this Berth Agency Agreement.

Art. 19. *Renegotiation.* This contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall, in compliance with said section 104, insert the provisions of this Article in each subcontract and purchase order made or issued in carrying out this contract.

Art. 20. *Headnotes.* The use of headnotes at the beginning of the articles of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

In witness whereof, the parties hereto have executed this Agreement in triplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION,
Director, National Shipping Authority.
By: ________________
[CORPORATE SEAL]
(Deputy Maritime Administrator)
____
By: ________________
Attest:
____
(Secretary)

[25 FR 4744, May 28, 1960, as amended by Amdt. 3, 34 FR 6522, Apr. 16, 1969. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 3. Addendum to GAA 3-19-51.

Each party holding a General Agency Agreement (GAA 3-19-51) shall be required to execute an addendum in form approved by the Office of General Counsel, Maritime Administration, amending the agreement to conform with the provisions of section 2(a).

(E.O. 11246, 3 CFR, 1964-1965 Comp. p. 339, as amended by E.O. 11375, 3 CFR, 1967 Comp. p. 320)

[NSA Order 1, Amdt. 3, 34 FR 6522, Apr. 16, 1969. Redesignated at 45 FR 44587, July 1, 1980]

PART 316—APPLICATIONS FOR AGENTS

Sec.
1. Acceptance of applications.
2. General considerations.
3. Financial qualifications.
4. Surety bond.
5. Execution of application.
6. Form of application.

Authority: 49 Stat. 1987, as amended; 46 U.S.C. 1114.

Source: AGE-2, 16 FR 2888, Apr. 3, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. Acceptance of applications.

The Director will accept applications for the appointment of general agents, agents and berth agents for the performance of the duties contained therein.

Sec. 2. General considerations.

In determining whether to approve the application, the Director will take into consideration the applicant's financial resources, credit standing, ownership of vessels, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving the responsibilities of an agent as contained in said agreement; and the Director will not enter into such agreements with any applicant applying who lacks sufficient capital, credit, and experience to fulfill the terms of said agreement. If the application is rejected by the Director, the applicant will be so advised.

Sec. 3. Financial qualifications.

(a) For the purposes of the financial qualifications it will be necessary for a general agent or a berth agent to have a minimum working capital of $50,000 and a minimum net worth of $300,000.

(b) The financial requirements of an agent will be covered in a supplement to this order.

Sec. 4. Surety bond.

Each general agent and berth agent shall be required to furnish surety bond pursuant to Article 3(f) of the general agency agreement in an amount deemed by the Director to be adequate to protect the interests of the owner but in no event less than $50,000.

Sec. 5. Execution of application.

(a) Any citizen of the United States as defined in section 2 of the Shipping Act, 1916, as amended, and section 905(c) of the Merchant Marine Act of 1936, as amended, may apply to the Director to act as general agent, agent or berth agent. The application to receive consideration should be substantially in the form indicated in this order (section 6). One (1) executed copy and five (5) conformed copies of the application should be filed with the Director, National Shipping Authority, Maritime Administration, Department of Transportation, Washington, DC, 20590.

(b) Each application should contain sufficient information to enable the Director to make all necessary determinations as to the qualifications of the applicant, including those as to citizenship, ability, experience, and financial resources.

(c) If any information called for by the application is not furnished, an explanation of the omission should be given. Detailed descriptions of exhibits need not be given. The applicant may furnish such relevant information as it may desire in addition to that specified in the form.

(d) Whenever any material change or changes occur which affect the ownership or organization of the applicant, including officers, the executive personnel management, citizenship, vessel ownership and financial resources, the applicant is required to file promptly a report of such change or changes with the Director, Nation Shipping Authority.

[AGE-2, 16 FR 2888, April 3, 1951, as amended by Amdt. 1, 19 FR 6164, Sept. 25, 1954. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 6. Form of application.

The form of application should be substantially as follows:

APPLICATION

FOR APPOINTMENT AS GENERAL AGENT, AGENT AND/OR BERTH AGENT OF THE

NATIONAL SHIPPING AUTHORITY

MARITIME ADMINISTRATION

DEPARTMENT OF COMMERCE

Filed by

A citizen of

The undersigned hereby applies for appointment as:

*(1) General Agent ☐
*(2) Agent ☐
*(3) Berth Agent ☐

* Indicate service or services for which application is made.

of the National Shipping Authority, in accordance with the provisions of NSA Order No. 1 (AGE-1) (herein called the "regulations"), which the applicant agrees shall be binding in all transactions in connection with this application. Applicant also agrees that any amendment or modification of the rules and regulations (approved by the Director), after the date of publication of such amendment or modification shall be binding in all transactions.

In order to induce the Director to act favorably upon this application, the applicant submits in support thereof the following information:

A. As to the applicant: its citizenship and affiliations.

1. Exact name.

2. Form or type of organization.

3. State or other sovereign power under the laws of which organized.

4. Address of principal executive offices.

5. A brief description of (a) the shipping business of the applicant: and (b) any other business activities of the applicant during the preceding ten years. If within such period the applicant has acquired the business of any other person or has been reorganized, there should be included a brief description of such acquisition or reorganization.

6. A list of (a) all subsidiaries, (b) parent company, and (c) all other affiliated interests of the applicant, together with an indication of the nature of the business transacted during the past ten years by each. This information may be furnished in the form of a chart, indicating clearly the relationships between the persons named, and the nature and extent of control.

7. The following information with respect to each officer and director of the applicant:

Name and address.
Office.
Nationality.
Capital shares owned.

A brief description should be submitted of the principal business activities during the past ten years of each officer and director, name and title of each other principal supervisory shoreside official with statement of the responsibility and experience, and number of employees in each department including but not limited to operating manager, port captain, port engineer, port steward, traffic manager, purchasing agent, principal accountant, and treasurer. If applicant has more than one class of stock, the information requested should be furnished for each class of stock.

8. Applicant represents that it is a citizen of ————————. If applicant claims United States citizenship, submit three affidavits of United States citizenship in form prescribed by the Maritime Administration, Department of Transportation, as set forth in 46 CFR Part 355 (General Order 89, Rev.)

(73 Stat. 597; 46 U.S.C. 11, 802, 888, 1244)

[AGE-2, 16 FR 2888, Apr. 3, 1951, as amended by Amdt. 5, 35 FR 19351, Dec. 22, 1970. Redesignated at 45 FR 44587, July 1, 1980]

PART 317—BONDING OF SHIP'S PERSONNEL

Sec.
1. What this order does.
2. Amount of bond.
3. Premiums.
4. Posting of bond.
5. Measures to protect ship's payrolls.
6. Surety and form of bond.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: AGE-3, 16 FR 6751, July 12, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order requires that General Agents, appointed under Service Agreement "G.A.A., 3/19/51" shall not advance or entrust any monies or slop chest property of the United States to a master, purser or any other member of the ship's personnel unless such person is under a bond indemnifying the United States against loss of such monies or property caused solely or in part by the dishonesty or lack of care of any such person in the performance of the duties of any petition covered by the bond.

Sec. 2. Amount of bond.

The amount of the bond must be governed by the amount of monies advanced or value of slop chest property entrusted, and shall, at all times, not be less than the value of slop chest property entrusted plus advances of monies for which a satisfactory accounting has not been made.

Sec. 3. Premiums.

The bonds provided for shall be furnished without cost to the National Shipping Authority, but the cost of the premiums of such bonds shall be included in the overhead expense of the General Agent.

Sec. 4. Posting of bond.

The General Agent shall retain an executed copy of each such bond in its principal office for examination by the National Shipping Authority at any time.

[Amdt. 1, 16 FR 9527, Sept. 19, 1951. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 5. Measures to protect ship's payrolls.

(a) General Agents are not required to consider the amount of the payroll delivered to the Master at the conclusion of a voyage in determining the amount of bond required for any one person filling a bonded position hereunder. However, the person paying off the crew should be either the Master, or purser, or some other member of the ship's personnel acting for the Master who has been bonded pursuant to this order. If, however, the person paying off is a shoreside employee of the General Agent, such employee shall be bonded under the General Agents' general fidelity bond.

(b) The principal risk involved where payrolls are delivered to a vessel at the conclusion of a voyage is loss through hold-up. Therefore, reasonable protection shall be taken by all General Agents where payrolls are delivered to a vessel or elsewhere. Because the circumstances of each case will vary, the General Agents shall use their best judgment in determining whether armored car service, armed guards or similar types of protection should be employed (in other words, the General Agents should follow their usual practices). The cost of these services may be included in vessel operating expenses.

(c) General Agents are not required to purchase hold-up insurance, since subject to the terms, conditions and limitations of Service Agreement "G.A.A., 3/19/51" losses resulting from this exposure are assumed by the National Shipping Authority.

Sec. 6. Surety and form of bond.

Each bond provided for by this order shall be duly executed by an authorized surety appearing on the current approved list of companies acceptable as sureties on Federal bonds published by the U.S. Treasury Department. The form of bond required by the National Shipping Authority to be used by the General Agents shall be as follows:

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION, NATIONAL SHIPPING AUTHORITY

Position Fidelity Schedule Bond

In consideration of the annual premium ———————— (hereafter called the "Surety") hereby agrees to pay to ———————— or its successors (hereafter called the "Agent") or the United States of America, (hereafter called the "United States"), represented by the Director, National Shipping Authority of the Maritime Administration, Department of Transportation (hereafter called the "Director"), as their interests may appear, the amount of any pecuniary loss of money or slop chest property caused, solely or in part, by reason of the dishonesty or lack of care of any person in the performance of the duties of any position, now or hereafter listed in the Schedule of Positions and Amounts forming part hereof (hereafter called the "Schedule"), on any and all vessels from time to time allocated to the Agent by the Director.

This bond is executed and accepted subject to the following agreements, limitations and conditions:

First. Liability under this bond begins with the —— day of ————, 19——in respect of each person then filling any position named in the Schedule on any and all vessels then allocated to the Agent by the Director. As to any position or positions bearing the same designation as that of any position or positions named in the Schedule on any vessel or vessels thereafter allocated to the Agent by the Director, liability under this bond shall automatically begin as soon as such position or positions are filled, provided the Director or the Agent shall within ninety (90) days of the date such position or positions are filled notify the Surety in writing of the date such position or positions are filled. As between the Agent and the Director, it shall be the responsibility of the Agent to give the notice to the Surety as provided herein. Without affecting its liability hereunder, the Surety agrees that neither the Agent nor the Director need furnish the names of vessels on which positions are bonded hereunder at any time during the effective period of this bond.

Second. If the Agent or the Director shall request the Surety to increase or decrease the amount of coverage applicable to any position named in the Schedule, the Surety shall make such change by written acceptance showing the increase or decrease in the amount of coverage and the effective date thereof, which effective date shall not be prior to the date of such request; provided, however, that if the Director shall within ninety (90) days after receipt of notice of a decrease resulting from a request by the Agent, advise the Surety that it does not consent to such decrease, such decrease shall become inoperative and coverage shall continue in the amount applicable prior to such decrease as if such decrease had never been made.

Third. If the Surety knows or has reason to believe that any person filling any position named in the Schedule has caused any loss of money or property entrusted to him by reason of his dishonesty or lack of care in the performance of the duties of such position, the Surety may terminate the coverage of this bond as to such person by giving notice in writing to the Agent and the Director at least thirty (30) days prior to the completion, in a continental United States port, of the then current voyage of the vessel on which such person is filling a position, in which case the coverage of this bond as to such person shall terminate when the crew is paid off upon such completion of the voyage. The Agent may cancel the coverage of this bond (a) as an entirety or (b) as to any position named in the Schedule by giving the Surety fifteen (15) days' written notice accompanied by written approval of the Director to such cancellation. The Director may cancel the coverage of this bond (a) as an entirety or (b) as to any position named in the Schedule upon fifteen (15) days' written notice to the Surety. In the event of any such cancellation the Surety shall refund to the Agent any unearned premiums computed pro rata.

Fourth. After discovery and report to the Agent or the Director of any loss hereunder, the Agent or the Director shall give the Surety written notice thereof, and within ninety (90) days after such written notice to the Surety shall file with the Surety affirmative proof of loss itemized and sworn to on forms furnished by the Surety. Prior discovery and report to the Agent of such loss shall not affect the right of the Director to notify the Surety of such loss and to file proof of loss. As between the Agent and the Director, it shall be the responsibility of the Agent to give the notice and to file the proof of loss with the Surety as provided herein. "Discovery and report" as used herein is defined in paragraph Tenth hereof.

Fifth. Any suit to recover on account of any loss hereunder shall be brought before the expiration of five years from the report to the Agent or the Director of the act causing such loss.

Sixth. The Agent will declare at the original effective date of this bond, and at each subsequent premium anniversary date, the total number of persons then filling each position named in the Schedule, and the annual premium will be computed for the ensuing year on the basis of the aggregate coverage represented by such declaration. Upon such premium anniversary date there will be a computation of additional premium or refund of premium in proportion to the change in the coverage each year.

Seventh. Settlement of any claim hereunder shall be made by check payable to the Agent unless otherwise instructed by the Director, but no settlement of any claim hereunder may be made for an amount less than the full amount of the loss for which the claim is made without the written consent of the Director thereto.

Eighth. The Surety shall not be entitled to any reimbursement, salvage or recovery,—except from insurance, reinsurance, collateral or indemnity taken by the Surety for its own benefit,—on account of any loss hereunder until the Agent or the Director, as their interests may appear, is reimbursed in full.

Ninth. No modification or change of any nature of the provisions of this bond shall take effect unless the Director shall have given his written consent thereto, except that the Agent may increase the coverage hereunder in accordance with the provisions of paragraph First hereof without such consent of the Director.

Tenth. (a) Any action, approval or consent which by the provisions of this bond is required to be taken or signed by the Director shall be effective if taken or signed by the Director or by his authorized representative, and wherever and whenever herein any right, power, or authority is granted or given to the Director, such right, power, or authority may be exercised in all cases by his authorized representative, and the act or acts of such authorized representative when taken shall constitute the act of the Director hereunder.

(b) "Discovery and report" by the Agent as used herein shall be deemed to mean discovery by any person and the report of such discovery to an executive officer or head of a department or division concerned with such discovery and report of the Agent at the Agent's principal place of business within the continental United States. "Discovery and report" by the Director shall be deemed to mean discovery by any person and the report of such discovery to an executive officer or head of a division or section concerned with such discovery and report at the Director's headquarters.

(c) Notices, approvals and requests required by the provisions hereof shall be sent to the Surety addressed to it at its home office at.

(d) Notices, acceptances and requests required to be sent to the Agent shall be sent to The Agent, ————————

(Name and head office address).

(e) Notices and requests to be sent to the Director shall be addressed to the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, at the Director's headquarters.

Signed, sealed and dated this —— day of ———, 19——.

[corporate seal] ————————

(Surety)

Attest or witness:

———— By ————

———— By ————

SCHEDULE OF POSITIONS AND AMOUNTS

The positions set forth hereinafter in this Schedule are all located on board the vessel or vessels allocated by the Director from time to time to the Agent named herein

Item No.	Description position	Number persons filling position	Amount coverage on each	Aggregate coverage	Premium

[AGE-3, 16 FR 6751, July 12, 1951, as amended by Amdt. 1, 16 FR 9527, Sept. 19, 1951. Redesignated at 45 FR 44587, July 1, 1980]

PART 318—COMPENSATION PAYABLE TO AGENTS, GENERAL AGENTS AND BERTH AGENTS

Sec.

1. What this order does.
2. Compensation of General Agents for husbanding services, etc.
3. Compensation for conducting the business of the vessels.
4. Compensation of sub-agents at ports outside the continental United States.
5. Definitions as used in this order.
6. Communication expenses.
7. Compensation of General Agents for liquidating the activities and business of vessels.
8. Increases and reductions of compensation under certain circumstances.
9. Accounting.
10. Effective date.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

Section 1. What this order does.

This order prescribes the amount of compensation payable to Agents, General Agents and Berth Agents of the National Shipping Authority for services rendered in connection with the husbanding and conduct of the business of dry-cargo, passenger type and tanker vessels assigned to such agents under standard forms of Service Agreements prescribed by NSA Order No. 1 (AGE-1) as amended from time to time.

[Amdt. 2, 17 FR 2615, Mar. 26, 1952, as amended by Amdt. 9, 22 FR 521, Jan. 26, 1957. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. Compensation of General Agents for husbanding services, etc.

(a) Except as otherwise provided, the General Agent who performs services in connection with the husbanding of the vessels and services related thereto, acts as accounting line in connection therewith, and performs duties for which no compensation is provided in other sections of this order, shall be compensated at the rate set forth in this paragraph, out of which the General Agent shall pay his sub-agents, branch houses, charges for postage and petties and customs brokers in the continental United States, and also any items of expense not authorized for inclusion in the vessel operating expenses:

(1) *Dry cargo vessels.* $125.00 per day per vessel for each dry-cargo vessel.

(2) *Passenger vessels.* $375.00 per day for passenger type vessels of 17,000 gross registered tons or over, effective October 28, 1951.

(3) *Vessels assigned for the Grain Storage Program.* $75.00 per day per vessel for the period the vessel is assigned for the Grain Storage Program: *Provided,* That if the vessel is assigned for a period of more than 10 days such compensation shall be reduced to $25.00 per day for each full day, after said 10 day period, that the vessel is determined by the Coast Director to be inactive because its movement to or from the Reserve Fleet, its preparation for loading, or its loading or discharging is stopped, effective April 15, 1953. (The Director has found that the activities of the General Agents performing services for the grain storage program are not within the scope of sections 3 and 7, of NSA Order No. 47 (AGE-4), and, pursuant to section 8(d) of said order, has exempted said activities from the provisions of said sections, and has determined that the rates prescribed in this subparagraph consitute fair and reasonable compensation for all services required to be performed by the General Agents in connection with the grain storage program.

(4) *Tankers assigned for deactivation and layup.* $75.00 per day per tanker for the period the tanker is assigned for deactivation and layup: *Provided,* That such compensation shall be reduced to $25.00 per day for ea full day the tanker is not being su stantially serviced by the Gener Agent under NSA Order No. 66 (OP 6) or is not moving or being moved connection with such services, as d termined by the Coast Director, effe tive July 15, 1954. (The Director h found that the activities of Gener Agents performing services for tanke are not within the scope of sections and 7 of NSA Order No. 47 (AGE- and pursuant to section 8(d) of sa order, has exempted said activitie from the provisions of said section and has determined that the rates pre scribed in this paragraph constitut fair and reasonable compensation fo all services required to be performe by the General Agents.)

(5) *Vessels withdrawn from Reserv Fleets for repairs.* Effective as o August 1, 1954:

(i) *Mariner ships; turbine repair and stripping.* $75.00 per day for each day the vessel is under tow from and to a Reserve Fleet and during actual stripping operation; $25.00 per day for each day such vessel is not under tow or not being stripped, as determined by the Coast Director, while assigned under this Program: *Provided,* That, if a vessel does not require stripping, compensation shall be payable in the sum of $25.00 per day for each day it is under assignment, whether or not under tow.

(ii) *Vessels in Emergency Ship Repair Program.* $50.00 per day for each day the vessel is being equipped and prepared for tow, is under tow, or is undergoing dismantling at the termination of tow, as determined by the Coast Director, while assigned under this program.

(iii) *Tankers assigned for reactivation.* $75.00 per day per tanker while assigned for this purpose.

(b) Upon the redelivery or total loss (not constructive total loss) of a vessel allocated to a General Agent under the Service Agreement, the compensation authorized in paragraph (a) of this section shall terminate.

(c) In determining the compensation provided in this section, part days shall be counted as whole days.

(d) *Compensation of General Agents for taking inventories.* (1) If a General

Agent is required to take an inventory of a vessel upon its delivery under General Agency Agreement (GAA 3/19/51), or upon redelivery from such assignment, the General Agent shall be paid an additional fee of:

(i) $100.00 when the General Agent performs inventory with his own personnel, and

(ii) $50.00 when the General Agent employs a private contractor to perform the inventory.

(2) In addition to the fee prescribed in paragraphs (d)(1)(i) and (ii) of section, the General Agent shall receive credit pursuant to the provisions of Article 5 of the Service Agreement for the following:

(i) When the General Agent performs inventory with his own personnel, he shall receive credit for cost of inventory surveyors actually employed in the accomplishment of the inventory, plus insurance and taxes and travel expenses; such costs shall not, however, exceed $475.00 for C1, C1-M-AV1, C2, C3, C4 and Victory type vessels, and $325.00 for EC2, Z-EC2 and N3 vessels, without the prior approval of the Director, National Shipping Authority. The undertaking given above to allow expenses does not extend to the allowance of the cost of position fidelity bonds covering inventory surveyors, which is for the General Agent's account.

(ii) When the General Agent employs a private contractor he shall receive credit for such costs: *Provided*, That such costs do not exceed $525.00 for C1, C1-M-AVI, C2, C3, C4 and Victory type vessels and $375.00 for EC2, Z-EC2 and N3 vessels, without the prior approval of the Director, National Shipping Authority. The above amounts are inclusive of, but not limited to, wages, employee insurance, taxes, fidelity bonds, travel expenses, etc.

(e) *Compensation of General Agents for predelivery services.* When the General Agent is required by the Director, National Shipping Authority, to inspect, survey and prepare specifications for the reactivation of a vessel in the reserve fleet prior to delivery of such vessel to a General Agent for repair or operation, the General Agent shall be paid at the rate of $125.00 per day per vessel for each day such services are rendered by the General Agent.

(f) *Compensation for reactivation services.* In addition to the compensation otherwise provided in this section, each General Agent shall be paid for reactivation services; $1500 per vessel for each vessel delivered to the General Agent and reactivated after September 1, 1966, and $25 per day per vessel for each day, not in excess of 60 days, required after September 1, 1966, for the General Agent to complete reactivation of a vessel delivered to the General Agent prior to September 1, 1966.

(g) *Compensation for deactivation services.* In addition to the compensation otherwise provided in this section, each General Agent shall be paid, for deactivation services $750 per vessel for each vessel deactivated by the General Agent after September 1, 1966.

(h) Compensation payable for services rendered while a ship is in Reduced Operational Status (R.O.S.) at a Reserve Fleet Site shall be:

(1) When a ship in R.O.S. does not return to operational status, but is placed in lay-up, the compensation shall be as provided in section 7 of this Part for liquidating the activities and business of the vessel.

(2) When a ship in R.O.S. returns to operational status, the compensation during the R.O.S. period shall not be as provided in subparagraph (1) of this paragraph but shall be $25 per day for each day the ship is in R.O.S., provided the total amount shall not exceed $1350.

[AGE-4, 16 FR 9983, Sept. 29, 1951, as amended by Amdt. 2, 17 FR 2615, Mar. 26, 1952; Amdt. 4, 18 FR 2174, Apr. 17, 1953; Amdt. 5, 19 FR 1410, Mar. 13, 1954; Amdt. 6, 19 FR 5628, Sept. 3, 1954; Amdt. 7, 19 FR 6518, Oct. 9, 1954; Amdt. 8, 20 FR 549, Jan. 25, 1955; Amdt. 9, 22 FR 521, Jan. 26, 1957; Amdt. 12, 31 FR 11651, Sept. 3, 1966; Amdt. 13, 33 FR 14286, Sept. 21, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 3. Compensation for conducting the business of the vessels.

Except as otherwise provided, the Agent, General Agent, or Berth Agent who performs services in connection with the business of the vessels, acts as accounting line in connection therewith, and performs duties for which no compensation is provided in other sections of this order, shall be compensated at the rates set forth below, out of which the Agent, General Agent, or Berth Agent shall pay his sub-agents, branch houses, charges for postage and petties and customs brokers in the continental United States, and also any items of expenses not authorized for inclusion in the vessel operating expenses:

(a) *Bulk cargo loaded or discharged in United States continental ports.* 1¼% of vessel's revenue.

(b) *Passengers, military personnel, mail, express and ad valorem.* In an amount to be determined by the Director and prescribed in a supplement to this order.

(c) [Reserved]

(d) *Compensation for services, incident to way cargo, passengers and mail,* 50% of the rates as provided in paragraphs (a) and (b) of this section.

(e) *Miscellaneous.* If a vessel loads cargo at a port outside the continental United States and is lost prior to arrival at the port of destination of the cargo, the General Agent responsible for the cargo business shall be paid one fee of 50 percent of the rates as provided in paragraph (a), (b) or (d) of this section, whichever is applicable.

(f) *Compensation for services incident to full cargoes of lumber in the intercoastal trade.* (1) 2½ percent of vessel's revenue for loading.

(2) 1¼ percent of vessel's revenue for discharging.

(g) *Employment in service of Military Sea Transportation Service with part cargoes of ore.* (1) $25.00 per day per cargo vessel for the period of employment in the service of MSTS;

(2) 1¼ percent of vessel's revenue on ore cargo, maximum $500.00.

[AGE-4, 16 FR 9983, Sept. 29, 1951, as amended by Amdt. 2, 17 FR 2615, Mar. 26, 1952; Amdt. 12, 31 FR 11651, Sept. 3, 1966. Redesignated at 45 FR 44587, July 1, 1980]

NOTE: The Director has found that the activities of General Agents performing services for vessels included in paragraph (a)(5) of sec. 2 are not within the scope of sections 3 and 7 of this order, and pursuant to section 8(d) of said order, has exempted said activities from the provisions of said sections and has determined that the rates prescribed in paragraph (a)(5) of sec. 2 constitute fair and reasonable compensation for all services required to be performed by the General Agents.

[NSA Order 47 (AGE-4, Amdt. 7) 19 FR 6518, Oct. 1954. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 4. Compensation of sub-agents at ports outside the continental United States.

Except where a schedule of fees has been approved by the Director, as compensation for services in connection with the vessel rendered by subagents or branch houses outside the continental United States, the General Agent may pay for the account of the United States, the prevailing commercial rates, subject to approval of the Director.

[AGE-4, 16 FR 9983, Sept. 29, 1951. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 5. Definitions as used in this order.

(a) *General Agent.* A "General Agent" is a person, firm or corporation designated as General Agent under the standard form of Service Agreement. GAA 3-19-51.

(b) *Sub-agent.* A "sub-agent" is a person, firm or corporation appointed by a General Agent to perform any of the functions of the General Agent under the standard form of Service Agreement, GAA 3-19-51.

(c) *Passenger.* A "passenger" is a person transported on a vessel other than members of the gun crew, the Master, licensed and unlicensed personnel of the vessel and military personnel.

(d) *Military personnel.* "Military personnel" includes members of the Armed Forces of the United States or its allies, prisoners of war, enemy aliens or involuntary passengers traveling under supervision and direction of the Department of Defense and such other persons as may be sponsored by and traveling for the account of the Department of Defense.

(e) *Bulk cargo.* "Bulk cargo" is cargo not entirely hand stowed, such as bulk cargoes of grain, ores, coal, etc., and other cargo, which may or may not be entirely hand stowed, such as sugar, lumber, etc., carried under charter party and not shipped under berth terms.

(f) *Ad valorem cargo.* "Ad valorem cargo" is cargo transported at a percentage rate based on the value of the cargo.

(g) *Express.* "Express" shipments are considered to be cargo for the purposes of this order.

(h) *Continental United States.* The "continental United States" as used in this order and other NSA orders shall be deemed to include the forty-eight States which were States of the United States of America on or before January 2, 1959, and the District of Columbia.

(i) *Way.* "Way" cargoes, passengers and mail means cargo, passengers and mail loaded and discharged at ports outside the continental United States.

(j) *Vessel's revenue.* "Vessel's revenue" is the gross ocean revenue (freight or passenger) accruing to the vessel, including freight, dead freight and demurrage.

[AGE-4, 16 FR 9983, Sept. 29, 1951, as amended by Amdt. 2, 17 FR 2615, Mar. 26, 1952. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 6. Communication expenses.

(a) All cablegrams, telegrams and radiograms that pertain directly and exclusively to the business of the United States, dispatched by General Agents and their branch houses and domestic and foreign sub-agents between the continental United States and points outside of the continental United States, shall be for the account of the United States and the cost thereof shall be included in the vessel operating expenses. All telegrams, cablegrams and radiograms that pertain directly and exclusively to the business of the United States dispatched by foreign sub-agents and branch houses, shall be for the account of the United States and the cost thereof shall be included in the vessel operating expenses. Except as provided in this section, communication expenses shall be absorbed by the General Agent out of the compensation paid under this order.

(b) Postage or express charges incurred in sending ships' disbursements accounts, manifests and other cargo or ship documents to and from the continental United States, or between foreign ports, may be included in the vessel operating expenses as reimbursable items of expense.

(c) The communication expenses incurred by General Agents in making position reports and transmitting certain data pertaining to Port Activities as required by the instructions issued by the Chief, Office of Ship Operations, National Shipping Authority, on May 24, 1951, shall be included in the vessel operating expenses as reimbursable items of expense.

(d) Expenses incurred by General Agents in forwarding mail addressed to crew members shall be included in the vessel operating expenses as reimbursable items of expense.

[AGE-4, 16 FR 9983, Sept. 29, 1951, as amended by Amdt. 2, 17 FR 2615, Mar. 26, 1952. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 7. Compensation of General Agents for liquidating the activities and business of vessels.

(a) In addition to the compensation otherwise provided in this order, each General Agent shall be paid for all services required to be performed by him after redelivery or total loss of a vessel, including the liquidation of activities and business of such vessels, assigned to such General Agent under the standard form of Service Agreement, GAA 3-19-51, as follows:

(1) For services rendered after each period of assignment during which a vessel made one or more voyages, $25 per day for each day of assignment not to exceed 60 days, and thereafter $10 per day for each day of assignment not to exceed an additional 120 days: *Provided,* That the amount paid shall not exceed $2,700.

(2) For services, if any, rendered after any period of assignment during which a vessel did not make a voyage, such fair and reasonable amount as the Director, National Shipping Authority, shall determine in each individual case, if application for such a fee is made by a General Agent, and if the Director finds that the evidence submitted by the General Agent in

support of his application justifies the payment of such fee.

(3) For the purpose of this paragraph (a), "each period of assignment" shall mean the period commencing with the date of delivery of the vessel to the General Agent under the Service Agreement and ending with the date of redelivery of the vessel to National Shipping Authority or the date of total loss.

(b) The compensation authorized in paragraph (a) of this section shall be paid upon satisfactory completion of the services required by National Shipping Authority: *Provided, however,* That payments on account may be made in advance to the extent that they are deemed to be earned by the Director, National Shipping Authority.

(c) If a General Agent who has redelivered all vessels assigned under his Service Agreement is required by the National Shipping Authority to retain custody of vouchers and records during any period in excess of six (6) months after satisfactory completion of services required by the National Shipping Authority, he shall be paid for the fair and reasonable cost of space occupied by such vouchers and records, as determined by the Director, National Shipping Authority.

[Amdt. 3, 17 FR 11696, Dec. 28, 1952. Redesignated at 45 FR 44587, July 1, 1980]

(See note to sec. 3)

Sec. 8. Increases and reductions of compensation under certain circumstances.

(a) If the rates provided in this order, with respect to a General Agent or his sub-agents and branch houses are found by the Director not to represent fair and reasonable compensation for the services required to be performed by the General Agent, sub-agent or branch house under the Service Agreement, based on the fair and reasonable cost of performing such services as determined by the Director on the basis of maximum reasonable efficiency and economy of operations, then the Director at his discretion, but without discrimination as between General Agents, sub-agents or branch houses for similar services, may adjust such compensation in such amount as he shall determine to be fair and reasonable under the circumstances.

(b) In addition to the compensation elsewhere provided in this order, the Director shall provide compensation in such amount as he shall determine to be fair and reasonable under the circumstances for extraordinary services heretofore or hereafter rendered by a General Agent or sub-agent or branch house which the Director finds were not intended to be covered by the compensation provided for in this order.

(c) The Director reserves the right to make equitable reductions of compensation with regard to any vessel or vessels after the date as of which such vessel or vessels are determined by the Director to be a constructive total loss. No compensation shall be allowed for any period of time lost by reason of the gross negligence of the General Agent as determined by the Director.

(d) The Director reserves the right to exempt from the provisions of sections 1 to 7 inclusive, specific activities which the Director finds are not within the scope of said sections, and to determine the fair and reasonable compensation to be paid in such cases without discrimination as between General Agents for similar services.

(e) The Director reserves the right to amend, modify or to terminate sections 1 to 9 inclusive.

(f) The provisions of this section shall not apply to the services required to be performed after redelivery or total loss of a vessel in liquidating the activities and business of the vessels, and no increase will be allowed in the compensation provided in section 7 of this order whether as a revision of such rates or in addition to such rates.

[AGE-4, 16 FR 9983, Sept. 29, 1951, as amended by Amdt. 3, 17 FR 11696, Dec. 28, 1952. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 9. Accounting.

(a) The payment and adjustment of the compensation provided in sections 1 to 8 inclusive, shall be subject to compliance by the General Agent with all and singular the terms and conditions of the Service Agreement and of such rules and regulations appertaining thereto as have been or, from time to time, may be issued by the National Shipping Authority, including but not limited to fiscal instructions to be observed in billing such compensation.

(b) Each General Agent subject to this order who has another contract with the Maritime Administration which gives the Maritime Administration the right to determine the amount of overhead expenses allocable to such contract (including but without limitation bareboat charter agreements and operating-differential subsidy contracts) may at the discretion of the General Agent allocate not more than 20 percent of the total compensation earned under sections 2, 3 and 8 of this order to NSA agency operations of the General Agent, in which case the remainder (but not less than 80 percent) of the total compensation earned under sections 2, 3 and 8 of this order, shall be deducted from the total overhead expenses of the General Agent before allocation of such expenses to his respective other operations, i.e., private vessel operations, bareboat charter agreements, operating-differential subsidy contract and agency operations other than NSA.

(c) For the purpose of making computations under paragraph (b) of this section, agency fees and commissions paid by the General Agent to subagents and branch houses, charges for postage and petties and customs brokerage charges pursuant to section 3 and communication expenses pursuant to section 6 which are to be absorbed by the General Agent under this order, shall be treated as administrative and general expense of the General Agent.

[AGE-4, 16 FR 9983, Sept. 29, 1951. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 10. Effective date.

Unless otherwise provided, this order shall become effective as of March 20, 1951, at 00:01 a.m., and as to each vessel as of the date of delivery to the General Agent under Service Agreement, GAA 3-19-51.

[AGE-4, 16 FR 9983, Sept. 29, 1951. Redesignated at 45 FR 44587, July 1, 1980]

PART 319—DUTIES OF BERTH AGENTS AND GENERAL AGENTS

Sec.
1. What this order does.
2. Duties of Berth Agents.
3. Duties of General Agents.
4. Use of facilities in United States ports.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: AGE-5, 16 FR 12434, Dec. 11, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order defines the duties of Berth Agents and General Agents in the conduct of business pertaining to vessels of the National Shipping Authority for the period of assignments of vessels under Berth Agency Agreement.

Sec. 2. Duties of Berth Agents.

Unless otherwise directed by the National Shipping Authority, the Berth Agent, pursuant to the terms of the Berth Agency Agreement for the period of assignment of each vessel thereunder, shall perform the following:

(a) *Conduct the business.* Conduct the business of the vessels including, but not limited to, all matters with respect to voyages, cargoes, mail, passengers, persons to be carried, charters, rates of freight and charges; and, subject to the provisions of section 4 of this order, procure or provide all services incident thereto including but not limited to stevedoring and other cargo handling, port activities, wharfage and dockage, pilotages, canal transits and services of sub-agents, brokers and consulates;

(b) *Shipping documents.* Issue or cause to be issued to passengers customary passengers tickets and to shippers customary shipping documents, freight contracts and bills of lading. All bills of lading shall be issued by the Berth Agent or its sub-agents as agent for the Master and the signature clause may provide substantially that the Berth Agent makes no warranty or representation as to the authority of the United States or the

Master to enter in to the agreement, and that the Berth Agent assumes no liability with respect to the goods described therein or the transportation thereof;

(c) *Sub-agents.* Appoint sub-agents where necessary, to perform the duties of the Berth Agent set forth herein;

(d) *Entrance and clearance; foreign ports.* Arrange entrance and clearance of vessel at all foreign ports, except as provided in section 3(a), including entrance at the first port of loading and clearance from last port of discharge;

(e) *Cargo claims.* Adjust, settle and pay cargo claims in accordance with such regulations as the National Shipping Authority may prescribe from time to time;

(f) *Special voyage requirements.* Notify the General Agent, in advance, of any requirements peculiar to the trade which relate to the duties of the General Agent, such as arrangements for dunnage, slings, fuel, fresh water, draft, etc., affecting the projected voyage in the service of the Berth Agent;

(g) *Deviations, casualties, etc.* Notify promptly the General Agent of all known deviations or intended deviations under the terms of the bill of lading or freight contract, and all known casualties, repairs or any other requirements which relate to the duties of the General Agent; and

(h) *Accounting.* Collect, deposit, remit, disburse and account to the National Shipping Authority for all monies due the United States arising in connection with activities under or pursuant to this order, and to the extent disbursements made by the Berth Agent pursuant to this order are recoverable from insurance the Berth Agent shall take such steps as may be appropriate to effect such recovery for the account of the United States.

In every case where, in accordance with the provisions of section 3(a) of this order, the sub-agent of a Berth Agent is used as the sub-agent of the General Agent, the Berth Agent is hereby authorized to reimburse the sub-agent out of National Shipping Authority funds for any services incurred for such vessel which are for account of the National Shipping Authority. In every case where, in accordance with section 3(a) of this order, the Berth Agent of a vessel is appointed by a General Agent as sub-agent of the General Agent, the Berth Agent is authorized to make disbursements on behalf of the General Agent out of National Shipping Authority funds for any expenses incurred for such vessel which are for account of the NSA. The Berth Agent shall submit to the General Agent the invoices and other documents covering all husbanding expenses (meaning expenses for all services not expressly assigned herein to a Berth Agent) incurred pursuant to the provisions of the foregoing authority and shall collect from the General Agent the amounts of such expenses. In the event the General Agent has reason to question or disapprove the payment of any particular item of husbanding expense same shall be referred to the Berth Agent for adjustment. This provision is stipulated because of the General Agent's over-all responsibility for the husbanding of the vessel although it is the purpose of this order to permit the Berth Agent promptly to reimburse sub-agents for services rendered or to promptly make disbursements on behalf of the General Agent.

Sec. 3. Duties of General Agents.

Unless otherwise directed by the National Shipping Authority, the General Agent, pursuant to the terms of the General Agency Agreement for the period of assignment of each vessel to a Berth Agent shall perform the following:

(a) *Sub-agents.* Appoint sub-agents for services required by the vessel which relate to the duties of the General Agent and which are beyond those performed by the sub-agent appointed by the Berth Agent pursuant to section 2 of this order, such as repairs, restowage of cargo, matters involving General Average, etc. Insofar as practicable, in foreign ports, the sub-agent of the Berth Agent should be used by the General Agent;

(b) *Marine casualties, claims and deviations.* Attend to all matters in connection with marine casualties and resulting claims in accordance with instructions of the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Department of Transportation, and promptly notify the P & I Underwriters pursuant to policy requirements of known or intended deviations under the terms of the bill of lading or freight contract; and

(c) *General.* Perform all duties prescribed in the General Agency Agreement or by such directions, orders or regulations issued by the National Shipping Authority pursuant theretc which are not expressly herein imposed upon the Berth Agent.

Sec. 4 Use of facilities in United States ports.

(a) Where the General Agent does not provide its own facilities in the United States port of loading or discharge, and when not otherwise directed or approved by the Coast Director of the National Shipping Authority in charge of the port where the services are to be performed, the Berth Agent shall, for the account of the National Shipping Authority, receive and deliver the cargo passengers and mail; provide and pay for stevedoring and other cargo handling expenses, port charges, wharfage and dockage, pilotage, commissions, and consular charges (except those pertaining to the master, officers and crew) and all other expenses in connection with the handling of the cargo passengers and mail.

(b) Where the General Agent provides its own facilities in the United States port of loading or discharging, and when not otherwise directed or approved by the Coast Director of NSA in charge of the port where the services are to be performed, the General Agent shall for account of the National Shipping Authority perform the duties provided in paragraph (a) of this section, but the Berth Agent shall have the right to employ a Head Receiving or Delivery Clerk to supervise the operation of receiving and delivering cargo.

(c) Where the General Agent and the Berth Agent both provide their own facilities in the United States port of loading or discharge, the duties provided in paragraph (a) of this section shall be performed for the account of the National Shipping Authority as directed by the Coast Director of NSA in charge of the port where the services are to be performed.

PART 320—CERTIFICATE OF OWNERSHIP AND OPERATION FOR GENERAL AGENCY VESSELS

Sec.
1. What this order does.
2. Certificate of Ownership and Operation.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

Section 1. What this order does.

This order prescribes a form of Certificate of Ownership and Operation which shall be placed aboard each vessel operated under General Agency Agreement.

[AGE-6, 17 FR 32, Jan. 1, 1952. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. Certificate of Ownership and Operation.

In order to evidence the fact that a vessel operated under General Agency service agreement for the account of the United States is not subject to certain taxes, dues, and charges levied against vessels, their stores, supplies, or equipment, by States or Territories of the United States or by foreign governments, there shall be placed aboard each vessel operated under "GAA 3-19-51", by the appropriate Coast Director of the National Shipping Authority, a Certificate of Ownership and Operation in the following form:

MA-205
(7-66)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

NATIONAL SHIPPING AUTHORITY

WASHINGTON, D.C.

Certificate of Ownership and Operation

This is to certify that the vessel ——, Official No. ————, was on ————delivered to ————, as General Agent, under the terms and conditions of a General Agency Agreement (Contract No. MA———, dated ————————) between the United States of America, acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, and said General Agent; that the vessel has been, since the date of delivery to the General Agent, and now is owned by the Government of the United States of America and employed in the public service; and that, pursuant to contractual relationships and the laws of the United States of America, all earnings and revenues derived from the operation of the vessel while so employed, including but not limited to all bill of lading freight earnings, are for the account of the Government of the United States of America.

Director,
Attest: *National Shipping Authority*

————————————————

Secretary,
Maritime Administration,
Dated: ————————, 19——.
[SEAL] ————————————————
General agent.
Approved:

————————————————

Coast Director,
Maritime Administration.

[AGE-6, 17 FR 32 Jan. 1, 1952, as amended by Amdt. 1, 31 FR 10640, Aug. 10, 1966. Redesignated at 45 FR 44587, July 1, 1980]

PART 321—AUTHORITY OF GENERAL AGENTS TO PROVIDE FOR AMERICAN MERCHANT MARINE LIBRARY SERVICE

Sec.
1. Purpose.
2. General Agents' authority; form of agreement.
3. Rate of compensation.
4. Period of the agreement.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: AGE-7, Rev., 26 FR 724, Jan. 25, 1961. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. Purpose.

This order authorizes each General Agent to enter into an agreement with the American Merchant Marine Library Association to furnish GAA vessels with library books; prescribes the rate of compensation to be paid; and adopts a standard form of agreement to be executed by each General Agent.

Sec. 2. General Agents' authority; form of agreement.

Each General Agent is authorized to enter into an agreement with the American Merchant Marine Library Association, an educational association incorporated and existing under the laws of the State of New York, to furnish and maintain standard libraries on board vessels operated by each General Agent under Service Agreement "GAA 3-19-51" as amended. The form of the agreement shall be as follows:

AGREEMENT BETWEEN UNITED STATES OF AMERICA AND AMERICAN MERCHANT MARINE LIBRARY ASSOCIATION

This agreement, made as of the — day of ————, 19—, by and between the United States of America (herein called the "United States") acting by and through the Department of Transportation, Maritime Administration, National Shipping Authority, and represented by its General Agent ——, a corporation organized and existing under the laws of ———— (herein called the "General Agent") and the American Merchant Marine Library Association, an educational association incorporated and existing under the laws of the State of New York, and having its principal office and place of business in the Borough of Manhattan, City, County and State of New York (herein called the "Association").

Witnesseth: Whereas, the Association was incorporated for the purpose of establishing and maintaining on board merchant vessels of the United States, small libraries for the use of the officers and crews. The standard library unit of the As[illegible]ation contains approximately 40 boun[illegible] books, 30 pocket books and pamphlets, and a bundle of magazines packed in a suitable case; and

Whereas, the United States is desirous of having the Association furnish and maintain standard libraries on board vessels operated by the General Agent for the account of the United States;

Now, therefore, in consideration of the reciprocal undertakings and promises the United States and the Association agree as follows:

ARTICLE 1. The Association agrees to deliver to each vessel operated by the General Agent under Service Agreement "GAA 3-19-51" at any one of the ports where the Association now has, or may hereafter have, a duly established agent, one of its standard library units, and to allow said unit to remain on the vessel for the balance of the calendar year, or until replaced by another standard library unit. The Association agrees to replace the library units on the vessels from time to time during the year with standard library units as requested by the General Agent whenever practicable when the vessel is in port where the Association maintains a duly established agent.

Art. 2. The Association agrees to deliver the standard library units to the vessels at its own risk and expense, and to remove them from any vessel within five days of the receipt of notice from the General Agent to do so. If the Association fails to remove a library unit within five days of the receipt of notice to remove, the General Agent may remove the library unit at the risk and expense of the Association. The library units shall be maintained on the vessels at the risk of the Association, and neither the United States nor the General Agent shall be liable to the Association for any loss or damage to any library unit whatsoever or to any book, pamphlet, magazine, case or other article of whatsoever nature contained in or as a part of the library unit, regardless of the cause of the loss or damage.

Art. 3. (a) Subject to the provisions of subparagraph (b) of this Article 3, the United States agrees to pay the Association $100.00 per vessel per year, effective January 1, 1961, for each vessel furnished with one or more standard library units during each calendar year, provided such unit is on board the vessel for a period of at least 45 days during such calendar year. The Association agrees to submit vouchers to the General Agent showing the number of standard library units furnished during each calendar year, and listing the names of the vessels and the dates of delivery of standard library units to the vessels.

(b) It is agreed by the parties that the cost per vessel during any calendar year subsequent to 1961 shall be subject to annual review and to adjustment upon the mutual agreement of the parties. Such adjusted annual cost shall be evidenced by an addendum to this contract, to become effective as of January 1st of the following calendar year.

Art. 4. No member of or delegate to Congress or Resident Commissioner is, or shall be, admitted to any share or part of this contract or to any benefit that may arise therefrom except as provided in section 116 of the Act of Congress approved March 4, 1909 (35 Stat. 1109).

Art. 5. The Association warrants that it has not employed any person to solicit or ecure this contract upon any agreement for a commission, percentage, brokerage, or fee, contingent or otherwise. Breach of this warranty shall give the United States the right to terminate the contract, or at its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Association for the purpose of securing business.

Art. 6. This agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

The Contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this agreement) shall, in compliance with said Section 104, insert the provisions of this Article in each subcontract and purchase order made or issued in carrying out this agreement.

Art. 7. This agreement shall be subject to termination by either party upon thirty (30) days' written notice. In witness whereof, the parties hereto have executed this agreement in quadruplicate the day and year first above written.

UNITED STATES OF AMERICA, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION, NATIONAL SHIPPING AUTHORITY

[SEAL] By: ————————
(General agent)
By: ————————
(Title)

Attest:
————————
(Secretary)

AMERICAN MERCHANT MARINE LIBRARY ASSOCIATION.

[SEAL] By: ————————

Attest:
————————
(Secretary)

Sec. 3. Rate of compensation.

The American Merchant Marine Library Association shall be paid $100.00 per vessel per year, effective January 1, 1961, for each vessel furnished with one or more standard library units during each calendar year, provided such unit is on board the ship for a period of at least 45 days during such calendar year: *Provided, however,* That the cost per vessel during any calendar year subsequent to 1961 shall be subject to annual review and to adjustment upon the mutual agreement of the parties, such adjusted annual cost to be evidenced by an addendum to the contract, to become effective as of January 1st of the following calendar year.

Sec. 4. Period of the agreement.

The agreement shall be effective as of January 1, 1961 and shall be subject to termination by either party upon thirty (30) days written notice.

PART 322—APPLICABILITY OF FORMER MARITIME COMMISSION AND WAR SHIPPING ADMINISTRATION ORDERS, REGULATIONS AND INSTRUCTIONS AND ALLOWABILITY OF EXPENSES UNDER SERVICE AGREEMENTS WITH NATIONAL SHIPPING AUTHORITY

Sec.
1. What this order does.
2. Applicability of former Maritime Commission and War Shipping Administration orders, regulations and instructions to activities, maintenance and business of ships assigned to agents under service agreements with National Shipping Authority.
3. Determination of allowable vessel operating expenses under service agreements with National Shipping Authority.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: AGE-8, 17 FR 3060, Apr. 8, 1952. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order establishes the extent of applicability of all orders, regulations or instructions issued by the former Maritime Commission and the War Shipping Administration to the activities, maintenance and business of ships assigned to agents under service agreements with National Shipping Authority, and establishes the basis for determining the allowability of expenses which are directly applicable to the activities, maintenance and business of such ships.

Sec. 2. Applicability of former Maritime Commission and War Shipping Administration orders, regulations and instructions to activities, maintenance and business of ships assigned to agents under service agreements with National Shipping Authority.

Orders, regulations or instructions issued by the former Maritime Commission and the War Shipping Adm istration have no applicability to t activities, maintenance and business ships assigned to agents under servi agreements with National Shippi Authority, except where such a spec ic order, regulation or instruction made applicable by the National Shi ping Authority or by other offices the Maritime Administration havi jurisdiction over matters involved i accordance with the provisions of th service agreement.

Sec. 3. Determination of allowable vess operating expenses under servic agreements with National Shipping Au thority.

(a) All expenses directly applicable to the activities, maintenance and business of ships assigned to agents under service agreements with National Shipping Authority will be allowed as vessel operating expenses when the Comptroller determines that such expenses are not clearly improvident or excessive and have been incurred for account of the Owner:

(1) In accordance with the provisions of service agreements and orders, regulations or instructions issued by the National Shipping Authority or other offices of the Maritime Administratio having jurisdiction over the matter involved, or,

(2) (In the absence of such orders, regulations or instructions) in accordance with reasonable commercial practices.

(b) The Director, National Shipping Authority, will make determinations and issue appropriate instructions, as to vessel operating expenses which:

(1) Are found to have been paid in wilfull contravention of outstanding instructions or to have been clearly improvident or excessive, or

(2) Are not allowable under the provisions of service agreements, or

(3) Have not been incurred in accordance with reasonable commercial practices.

PART 323—MAXIMUM BROKERAGE COMMISSION APPLICABLE TO NATIONAL SHIPPING AUTHORITY VESSELS

Sec.
1. What this order does.
2. Compensation and general conditions.
3. Renegotiation.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: DTO-2, 17 FR 32, Jan. 1, 1952. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order authorizes maximum brokerage commissions payable for the servicing of voyage charter parties covering cargoes carried by vessels operated for account of the National Shipping Authority.

Sec. 2. Compensation and general conditions.

(a) When an NSA vessel is fixed under WARSHIPVOY or other approved form of charter, General Agent is authorized, in vessel's interest, to appoint an established chartering broker, other than subsidiary or affiliate, to conclude the fixture and service the charter. General Agent may also acknowledge and recognize any broker or agent or freight forwarder nominated to the General Agent or to his selected chartering broker by the charterer as representing charterer's cargo interests.

(b) For services rendered on vessels commencing to load during the period March 13, 1951 to and including December 31, 1951, total brokerage commission shall not exceed 1¼ percent of the freight, deadfreight and demurrage except as otherwise provided in paragraph (b)(1) of this section. Address commission shall not be paid.

(1) When two or more brokers are involved in connection with cargo loaded in a foreign port, total brokerage commission not exceeding 2½ percent is authorized when specifically approved by the National Shipping Authority.

(c) For services rendered on vessels commencing to load on and after January 1, 1952, compensation shall be as provided in paragraphs (b) and (b)(1) of this section, except that on cargoes loaded in the Continental United States brokerage commission shall not be paid on that portion of the freight charges in excess of $8.00 per manifest ton. For cargoes loaded in U.S.A. ports which are affreighted on lump sum or other basis not calculated per manifest ton, brokerage commission will be as specifically authorized by the National Shipping Authority.

(d) All charters shall show the names of broker or brokers used with the proportion of the brokerage commission accruing to each if more than one broker is involved.

Sec. 3. Renegotiation.

The compensation paid or payable pursuant to this order is subject to the provisions of the Renegotiation Act of 1951, 65 Stat. 7, Pub. L. 9, 82d Congress.

PART 324—PROCEDURAL RULES FOR FINANCIAL TRANSACTIONS UNDER AGENCY AGREEMENTS

ACCOUNTS

Sec.
1. Books of accounts.
2. Bank account.

ACCOUNTING FOR REVENUES

3. Accounting for revenues.

FUNDING OF OPERATIONS

4. Funding of operations.

DISBURSEMENTS

5. Disbursements at principal office of agent.
6. Disbursements at other domestic ports.
7. Disbursements at foreign ports.

DOCUMENTS

8. Disbursement documents.
9. Maintenance of documents.
10. Lost documents.

REPORTS AND AUDIT

11. Reports to the owner.
12. Audit.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: FIS-1, 16 FR 2885, Apr. 3, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

ACCOUNTS

Section 1. Books of account.

A separate set of books of account shall be opened for the purpose of recording the various transactions in connection with the said agency agreement. The books of original entry and ledgers may be similar in design to those heretofore employed by the agent unless it develops that they are inadequate, in which event the deficiency shall be remedied promptly. The accounts required in operations under this agency agreement, however, shall conform to the chart in the uniform system prescribed by the Maritime Administration in General Order No. 22, Revised (46 CFR Part 282) and recordings in the accounts shall be in accordance with the descriptions thereof contained in the said uniform system.

Sec. 2. Bank account.

A separate joint bank account will be maintained in a depository or depositories designated by the agent and approved by the National Shipping Authority (referred to in this order as the owner), into which all collections under the agency agreement will be deposited and from which disbursements in connection with the activities, maintenance and business of the vessels thereunder will be made. Upon designation by the agent and approval by the owner of the depository or depositories, the owner will issue an order for the establishment of the joint bank account. The order will set forth the conditions governing the establishment and maintenance of the account and the making of deposits therein and withdrawals therefrom. A signed copy of the order of the owner will be furnished the agent and the agent promptly shall adopt, through its Board of Directors, a resolution satisfactory in form and substance to the owner, authorizing the establishment and maintenance of the account in conformity with the action of the owner. A signed copy of the order of the owner and a certified copy of the resolution of the agent will be furnished by the owner to the deposito for its guidance in maintaining t fund and honoring instruments withdrawal. The order will provid among other things, that:

(a) Withdrawals from this bank a count may be made by the agent without the countersignature of the owne for disbursements in connection wit the activities, maintenance and bu ness of the vessels assigned unde agency agreements, except disbursements involving payments to the agent directly, or to any other persons specifically designated by the Director, National Shipping Authority, in which instances the countersignature of a designated representative of the owner will be required, (b) withdrawals may be made from the account by the owner without the countersignature of the agent whenever and to the extent the owner shall determine that the balance in the account in excess of current operating requirements warrants such action, (c) the bank shall have no rights against the joint account on account of indebtedness of the agent either by way of set-off or otherwise, (d) the bank may receive for deposit in the joint account any funds tendered to it by any person with instructions that the same be deposited in the said account, and the bank shall have no responsibility to inquire as to the source of such funds, and (e) the bank shall disburse funds from the joint account in accordance with checks, drafts, or other orders for the payment of money, drawn as provided in the order, without making any inquiry as to the purpose or use to which such withdrawals are to be put.

ACCOUNTING FOR REVENUES

Sec. 3. Accounting for revenues.

(a) *General.* (1) The Agent shall be responsible for the prompt collection of all vessel operating revenue, shall issue such instructions as may be necessary to its branch houses or subagents, and shall take such other steps as may be necessary to insure prompt remittance to it of vessel operating revenue collected outside its principal office.

(2) Freight revenue collected, less refunds made therefrom, shall be remit-

ted to the owner promptly subsequent to the close of each month. Disbursements except for refunds shall not be made from freight revenue collections unless specifically authorized by the owner.

(3) Passenger revenue collections shall be accounted for in accordance with procedures to be described.

(4) The agent shall in all cases perform his audit and review functions promptly and shall be in a position to supply complete documentation for a current audit by representatives of the owner.

(b) *Revenue documents*—(1) *Freight revenue.* The agent shall require its domestic and foreign branch houses, sub-agents, or other representatives, to prepare and submit revenue documents (manifests, bills of lading, out turn weight certificates, correction notices, etc.) to it. The manifest, in addition to showing the name of shipper, consignee, weight or measurement, freight rate and basis (whether the freight rate applies on measurement or weight basis), and amount of freight, shall show also advance charges, prepaid beyond charges, etc. A recapitulation sheet shall be made of the totals shown on the individual manifest sheets for each port. The aggregate totals of weight and measurement freight shall be converted to freight payable tons of bulk, general, heavy lifts, and commodities subject to special stevedoring rates if freight carried is subject to an over-all stevedoring agreement.

(2) *Passenger revenue.* Agents to whom combination passenger and freight vessels have been assigned under agency agreements and who heretofore have established a passenger accounting procedure, may continue to follow such procedure under the agency operations, unless such procedure is found to be inadequate by the owner.

(3) *Certifications of revenue documents.* The following certifications will be signed by branch houses or sub-agents:

(i) *Freight manifests.* Certified to be a true and correct reflection of cargo loaded and rates charged.

____

Branch house or sub-agent

By: _____ ____________________

Name *Title*

(ii) *Passenger manifests.* Certified to be a true and correct reflection of passengers carried and rates charged.

____

Branch house or sub-agent

By: __________________________

Name *Title*

(4) *Definition of manifest.* The term "manifest," as used in this order, shall be interpreted to include appropriate equivalent documents as customarily used.

FUNDING OF OPERATIONS

Sec. 4. Funding of operations.

Cash advances will be made by the owner in such amounts and at such times as are required to adequately fund the activities, maintenance and business of the vessels assigned under agency agreements.

DISBURSEMENTS

Sec. 5. Disbursements at principal office of agent.

All expenses directly applicable to the activities, maintenance and business of the vessels assigned under agency agreements shall be paid from funds advanced by the owner unless otherwise specifically provided. When paid by check, invoices shall reflect the numbers of the checks by which the invoices were paid; when paid other than by check of the agent at his principal office, invoices must bear evidence of payment.

Sec. 6. Disbursements at other domestic ports.

Disbursements at domestic ports other than the principal office of the agent for expenses as referred to in section 5 shall be made by one of the three following methods:

(a) After proper certification by the branch house or subagent, invoices shall be forwarded to the agent for payment, or

(b) The branch house or subagent shall pay invoices and thereafter apply to the agent for reimbursement, supporting its voucher with invoices bearing evidence of payment covering individual disbursement, or

(c) The agent may advance from time to time from the joint bank account the funds necessary to meet the requirements of such branch houses or subagents in connection with the activities, maintenance and business of the vessels assigned under the agency agreement. In such cases the branch house or subagent shall pay invoices from such advances and make proper accounting to the agent for each advance supported by invoices bearing evidence of payment and accompanied by remittance covering any unexpended balance of the advance, promptly after the departure of each vessel for which such advance was made.

Sec. 7. Disbursements at foreign ports.

Disbursement procedures at foreign ports may differ in the case of individual agents and in view of existing conditions. Disbursements at foreign ports shall be made by one of the following methods or by any other method outlined to and approved by the owner in advance of its use:

(a) The agent may advance from time to time from the joint bank account the funds necessary to meet the requirements of the business of the vessels assigned under the agency agreement. In such cases the foreign branch house or sub-agent shall pay invoices from such advances and shall make proper accounting to the agent for all advances supported by invoices bearing satisfactory evidence of payment. Any gains or losses in exchange on such advances or disbursements shall be for the account of the owner.

(b) The foreign branch house or subagent may pay all invoices from his own funds and thereafter draw on the agent for reimbursement, at the same time forwarding the disbursements account by air mail.

(c) The agent may establish Letters of Credit making funds available to the foreign branch house or sub-agent against which funds may be drawn by the sub-agent for branch house for payment of properly approved documents.

DOCUMENTS

Sec. 8. Disbursement documents.

(a) *Preparation of invoices by contractors and/or vendors.* (1) Invoice from contractors or vendors shall b supported by evidence of delivery o supplies (delivery receipts), performance of services, or use in facilities furnished the vessels, and shall includ the following:

(i) Name of vessel.

(ii) Name of port at which the services, supplies, or facilities were furnished.

(iii) Date of delivery or service.

(iv) Necessary details as to the nature of services, supplies, or facilities furnished including quantity, rate, price and total amount.

(2)(i) In addition to the foregoing, contractors or vendors shall certify each invoice or voucher (original only) in the following manner:

> I certify that the above bill is correct and just and that payment therefor has not been received.
>
> *Name of contractor or vendor*—
>
> By: ————————
>
> *Name* *Title*

(ii) The agent shall advise its domestic and foreign branch houses, subagents, or other representatives to the effect that the foregoing information and certifications must be shown on all invoices or vouchers when received from contractors or vendors.

(iii) In instances where the foregoing certification is unobtainable for foreign purchases only, it may be waived: *Provided,* That, in lieu of such certification the agent certifies the invoice as follows:

> We certify that the prescribed certification of the payee was unobtainable.
>
> ————————
>
> *General agent or berth agent*
>
> By: ————————
>
> *Name* *Title*

(3) In instances where it is not possible or practicable to obtain invoices bearing evidence of payment covering disbursements at foreign ports, that requirement will be waived, provided the agent certifies as follows:

> We certify that, to the best of our knowledge and belief, this invoice has been paid

---

General agent or berth agent

By: ---

Name *Title*

(4) Invoices rendered to the agent by its branch houses or sub-agents shall be only those of the contractors or vendors who actually rendered the services or furnished the supplies or facilities.

(5) If the laws of any country require the foreign sub-agent or branch house to retain the original invoice with stamps affixed, or if such laws require the original receipt as prima facie evidence of payment, the corresponding duplicate copy of the invoice, in proper form, must be forwarded to the agent with notation to that effect made thereon by the foreign sub-agent or branch house.

(b) *Certification of master, ship's officers, branch houses, sub-agents, or duly authorized representatives.* (1) Evidence of delivery of supplies, performance of services, or use of facilities, as normally provided by delivery receipts, or an equivalent form, comprises an essential part of proper documentation for disbursing purposes.

(i) Where supplies are delivered or services or facilities are furnished directly to a vessel, evidence of delivery or performance normally should be signed by a ship's officer.

(ii) Where such evidence is not signed by a ship's officer, any duly authorized representative of the agent may sign as "Duly Authorized Representative," provided the agent shall be responsible for the designation of proper and qualified representatives and provided the agent shall furnish, when so required by the owner, adequate evidence that the signing representative was duly authorized by him. In instances in which the agent may not be able to identify in advance the representative who may sign, the agent shall have the responsibility for determining that the person signing was qualified to execute evidence of delivery of supplies, performance of services, or use of facilities involved.

(2) For charges for watching cargo, stevedoring, wharfage, receiving and delivering cargo, clerking and checking, or other services or facilities not rendered directly to the vessel, for which normally delivery receipts or any equivalent form are not furnished, the following certification on the face of the original invoice by a duly authorized representative of the agent is required.

I certify that the services or facilities as specified have been furnished.

Name

Duly authorized representative

(3) Ships' payrolls shall be certified by the master (or his authorized representative) as follows:

I certify that this payroll is true and correct, and that the persons named hereon have performed the services for the period stated.

Master (or his authorized representative)

(4) In instances where vessels are under foreign articles the payroll shall bear proper evidence of having been paid off before a United States Shipping Commissioner or an American Consul.

(5) The slop chest account shall be certified by the master as follows:

I hereby certify that the above is a true statement of all Slop Chest transactions on this vessel and voyage.

Master (or his authorized representative)

(6) A similar certification shall be made by the Chief Steward (or his authorized representative) covering bar transactions (if any).

(c) *Certification by branch house or sub-agent where agent does not handle transactions directly.* The certification of the branch house or sub-agent must be shown on the original invoice (if rendered singly) or on the summary disbursement statement (if rendered in groups) in the following manner:

(1) *On single invoices.*

I certify that the prices charged are reasonable and correct.

Branch house or sub-agent

By: ____________________

Name *Title*

(2) *On the summary statement.*

I certify that the prices charged per invoices detailed above are reasonable and correct.

____

Branch house or sub-agent

By: ____________________

Name *Title*

Sec. 9. Maintenance of documents.

The agent shall maintain the originals of all documents at his principal office. All documents originating at other domestic ports and at foreign ports shall be transmitted as currently as possible to the principal office of the agent. The agent shall in all cases perform his audit and review functions promptly and shall be in a position to supply complete documentation for a current audit by representatives of the owner. The agent shall maintain to the maximum extent possible a complete and orderly file of all authorizations for facilities, services and supplies, and complete tariffs and port schedules covering charges at domestic and foreign ports incident to the operation of the vessels assigned under the agency agreement.

Sec. 10. Lost documents.

In the event of the loss of documents, photostat, carbon, or other suitable copies may be substituted therefor, in which event the following certification shall be placed on such copies:

I certify that, to the best of my knowledge and belief, this is a true copy of an original that has been lost.

____

Branch house or sub-agent

By: ____________________

Name *Title*

Reports and Audit

Sec. 11. Reports to the owner.

The agent shall submit to the local District Finance Officer of the owner, in triplicate, not later than 20 days after the end of each month, its general ledger trial balance and such schedules and support thereof as may be required. The agent shall also submit to the owner, in original and four copies, not later than 10 days after the end of each month a statement in the form and content to be prescribed reflecting cash receipts and cash disbursements for the preceding month and cumulative totals for the year to date; the original and one copy will be transmitted to the local District Finance Officer and three copies will be transmitted to the Chief, Office of Finance, Maritime Administration, Washington.

[FIS-1, 16 FR 2885, Apr. 3, 1951, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 12. Audit.

(a) The owner will audit as currently as possible subsequent to audit by the agent, all documents relating to the activities, maintenance and business of the vessels assigned under agency agreements.

(b) The agent shall maintain all documents in his principal office, for the time being in accordance with his customary practice of filing.

(c) Subsequent to audit by the owner, at such intervals as may be determined, the owner will authorize entries to be made to revenue and expense accounts and to accounts reflecting relations between the owner and the agent.

NOTE: Books of accounts and documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[16 FR 2885, Apr. 3, 1951, as amended at 21 FR 8105, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 325—PROCEDURE TO BE FOLLOWED BY GENERAL AGENTS IN PREPARATION OF INVOICES AND PAYMENT OF COMPENSATION PURSUANT TO PROVISIONS OF NSA ORDER NO. 47

Sec.

1. What this order does.
2. Terms.
3. Preparation of invoices.

Sec.
4. Method of payment.
5. Accounting.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: FIS-2, 16 FR 10026, Oct. 2, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order prescribes procedures for the preparation of invoices for, and payment and the accounting for, compensation payable to General Agents of the National Shipping Authority for services rendered in connection with the husbanding and conduct of the business of dry cargo vessels assigned to General Agents under the standard form of Service Agreement GAA, March 19, 1951, as prescribed in NSA Order No. 47. (AGE-4 of this chapter).

Sec. 2. Terms.

The terms employed in this order shall have the same meaning as those contained in NSA Order No. 47.

Sec. 3. Preparation of invoices.

(a) Pursuant to Article 4 of the Service Agreement, the General Agent shall prepare monthly invoices for compensation earned during the preceding month under the applicable provisions of NSA Order No. 47.

(1) Invoices shall be prepared so as to show separately husbanding services and other services in conducting the business of the vessels.

(2) Husbanding services shall be stated to indicate the names of all vessels delivered to the General Agent during the month involved, the number of days each vessel was serviced or operated by the General Agent during the month, rate of compensation per day, and the amount produced by the calculation.

(3) Services in conducting the business of the vessels shall be stated to indicate the name of the vessel, the voyage number, the amount of revenue, the rate of compensation, and the amount produced by the calculation; and, in the instance of vessels employed in MSTS service, the number of days the vessels were so employed, the rate of compensation per day, and the amount produced by the calculation.

(b) Invoices shall be certified by a duly authorized officer of the General Agent as follows:

> I certify that this invoice is correct and just, that it is a correct statement of the compensation calculated in accordance with the provisions of NSA Order No. 47 due the undersigned General Agent for the month of ———— under Service Agreement No. ——— made as of ———— with the National Shipping Authority, and that payment thereof has not been received.
>
> ________________________
> Name of General Agent
>
> ________________________
> Signature
>
> ________________________
> Title

Sec. 4. Method of payment.

The General Agent shall prepare check drawn on the NSA Special bank account for countersignature by an authorized representative of the Owner. All such payments to the General Agent shall be considered as payments on account and are subject to post-audit by the Owner.

Sec. 5. Accounting.

The General Agent shall record the amounts of compensation paid from the NSA Special bank account in its agency books, in the following designated accounts:

Account 887—Husbanding Compensation.
Account 888—All Other Compensation.

This account shall be maintained to show separately compensation paid under sections 3(a), 3(b), 3(c), and 3(d) of NSA Order No. 47.

NOTE: Invoices and account books referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[16 FR 2885, Apr. 3, 1951, as amended at 21 FR 8105, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 326—MARINE PROTECTION AND INDEMNITY INSURANCE UNDER AGREEMENTS WITH AGENTS

Sec.

326.1 Purpose.
326.2 Insurer.
326.3 Insured.
326.4 Reports of accidents and occurrences.
326.5 Report of claims.
326.6 Settlement of claims.
326.7 Litigation.

AUTHORITY: 50 U.S.C. App. 1744; 46 U.S.C. 121a; 1114(b); 49 CFR 1.66.

SOURCE: 53 FR 37572, Sept. 27, 1988, unless otherwise noted.

§ 326.1 Purpose.

This part states that the Maritime Administration (MARAD) shall be responsible for providing or obtaining marine protection and indemnity (P&I) insurance for any vessel that has been placed in the National Defense Reserve Fleet (NDRF), which includes the Ready Reserve Force component, which vessel is assigned under a General Agency Agreement. These various forms of Agreements are entered into by the United States, acting by and through the National Shipping Authority, MARAD, and a private company (Agent). An agreement also contains procedures for the Agent to report accidents and occurrences of a P&I nature to MARAD and to report and settle P&I claims.

§ 326.2 Insurer.

MARAD shall be responsible for providing or obtaining P&I insurance for all vessels assigned to Agents under an Agreement. At its election, MARAD may be a self-insurer of any one or more vessels covered by the Agreement, or may obtain P&I insurance coverage under one or more policies written by underwriters of marine insurance. MARAD shall determine the amount of coverage to be provided or obtained.

§ 326.3 Insured.

The insureds are: The United States of America, acting by and through the Director, National Shipping Authority, Maritime Administration, Department of Transportation, and it Agents (including Agents' employees) Sub-agents shall be insureds only a expressly provided in the Agreement Independent contractors of the Agents are not insureds.

§ 326.4 Reports of accidents and occurrences.

The Agent shall report every accident or occurrence of a P&I nature promptly to both the Director, Office of Trade Analysis and Insurance, Maritime Administration, 500 Seventh Street, SW., Room 8121, Washington, DC 20590, Tel. (202) 366-1461, and the contracting officer named in the Agreement. If MARAD has obtained P&I insurance through a marine insurance underwriter, the Agent also shall concurrently file a report of such accident or occurrence with the underwriter. MARAD shall disclose full details as the identity of such underwriter to the Agent.

§ 326.5 Report of claims.

The Agent also shall submit a quarterly report of all claims of a P&I insurance nature to the Director, Office of Trade Analysis and Insurance. The report shall contain all relevant information, *e.g.*, the names of the vessels and of the claimant, the date of the injury or occurrence, the amount claimed, the basis for any payments already disbursed in behalf of the United States, estimated future costs and an evaluation of the claim of the merits.

§ 326.6 Settlement of claims.

(a) After ascertaining from MARAD the availability of funds, the Agent is authorized to settle individual claims of a P&I insurance nature that do not exceed $5,000. For a settlement in excess of $5,000, the Agent shall obtain MARAD's prior approval through the Director, Office of Trade Analysis and Insurance. If MARAD has placed the P&I insurance with an insurance underwriter, the Agent also shall obtain the prior approval of the underwriter to settle claims.

(b) The amount of individual claims that do not exceed the Agent's limit for settlement shall be chargeable by the Agent to the vessel expense and shall be accounted for in accordance with current accounting instructions of MARAD.

(c) When settling any such claim, the Agent shall advise the claimant that such settlement shall be accounted for in accordance with current accounting instructions, and shall also advise the claimant that such settlement is not to be construed as an admission of liability by or on behalf of the United States, the Agent or any other person.

(d) The Agent shall apply sound judgment and follow standard practices of vessel operators in the settlement or other disposition of such P&I insurance claims, and shall settle such claims only when the settlement is adequately supported by all the facts and circumstances and is in the best interest of the United States.

§ 326.7 Litigation.

(a) If a court suit of a P&I nature is filed which arises out of the activities of the Agent under its Agreement, wherein the Agent is named as the party defendant or one of the parties' defendant irrespective of whether the risk is covered by P&I insurance, the Agent shall immediately forward copies of the pleading and all other related legal documents, by first class mail, to the Chief Counsel, Maritime Administration, Department of Transportation, Washington, DC 20590, and to the Attorney General, Attn: Civil Division, Torts Branch, Department of Justice, Washington, DC 20530. No agent or authorized subagent shall incur any legal expenses in connection with any claim of a P&I nature, unless approved in advance by MARAD, and by the underwriter, where applicable. However, the Agent may incur legal expenses if the mission of the vessel will be frustrated or impeded and/or time will not permit such prior approval.

(b) In the event of any attachment or seizure of a vessel, whether or not the risk is of a P&I nature, the Agent shall immediately notify the Chief Counsel, Maritime Administration, Washington, DC 20590, Tel. (202) 366–05711, by telegram, radio, or cable.

PART 327—SEAMEN'S CLAIMS; ADMINISTRATIVE ACTION AND LITIGATION

Sec.
1. What this order does.
2. Statutory provisions.
3. Claims required to be submitted for administrative action prior to suit.
4. Form and contents of claim.
5. Filing of claims.
6. Notice of allowance or disallowance.
7. Presumed disallowance.
8. Court action.

AUTHORITY: 49 Stat. 1985–87, as amended, sec. 1, 57 Stat. 45, as amended, 65 Stat. 59; 46 U.S.C. 1111-1114, 50 U.S.C. App. 1291, 46 U.S.C. 1241a.

SOURCE: LRP-1, 20 FR 2414, Apr. 13, 1955; 20 FR 2512, Apr. 16, 1955. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

With respect to officers and members of crews (hereafter in this order referred to as "seamen") employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration, or successor, this order prescribes rules and regulations pertaining to (a) the filing of claims designated in section 3 of this order and (b) the administrative allowance, or disallowance (actual and presumed), of such claims, in whole or in part.

Sec. 2. Statutory provisions.

(a) In connection with the Vessel Operations Revolving Fund created for the purpose of carrying out the vessel operating functions of the Secretary of Transportation, the Third Supplemental Appropriation Act, 1951 (Pub. L. 45, 82d Congress; 65 Stat. 59; 46 U.S.C. 1241a) provides in part:

> That the provisions of sections 1(a), 1(c), 3(c), and 4 of Pub. L. 17, Seventy-eighth Congress (57 Stat. 45), as amended, shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States.

(b) Section 1(a) of Pub. L. 17, 78th Congress (57 Stat. 45; 50 U.S.C. App. 1291(a)), as amended, provides:

> That (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. * * *. Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seamen were employed on a privately owned and operated American vessel. Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. * * *. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Administration" and "Administrator, War Shipping Administration" shall be deemed to include the United States Maritime Commission with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or subchartered to other agencies or departments of the United States.

(c) The functions of the War Shipping Administrator and War Shipping Administration were transferred for liquidation purposes by Title II of Pub. L. 492, 79th Congress (60 Stat. 501) to the United States Maritime Commission and, on August 20, 1949, by Reorganization Plan No. 6 of 1949 (63 Stat. 1069) to the Chairman of said Commission; certain of the functions of the United States Maritime Commission and of its Chairman were transferred on May 24, 1950, by Part II of Reorganization Plan No. 21 of 1950 (64 Stat. 1273, 1276; 46 U.S.C. 1111-1114) to the Secretary of Transportation, and thereafter redelegated by the Secretary of Transportation to the Maritime Administrator (Department Order No. 117 (Amended), Manual of Orders, Department of Commerce); vessel operating functions have been redelegated by the Maritime Administrator to the Director, National Shipping Authority, Maritime Administration (Administrator's Order No. 11 (Amended), Manual of Orders, Federal Maritime Board/Maritime Administration).

Sec. 3. Claims required to be submitted for administrative action prior to suit.

All claims specified in subsections (2) and (3) of section 1(a) of Pub. L. 17, 78th Congress, quoted in section 2(b) of this order, must be submitted for administrative consideration, as provided in sections 4 and 5 of this order, prior to institution of court action thereon.

Sec. 4. Form and contents of claim.

The claim need not follow any particular form, but it shall be in writing, shall be designated as a claim, shall show that the object sought is the administrative allowance of the claim, shall comply with the requirements of this order, and shall be filed as provided in section 5 of this order. Court actions filed against General Agents contrary to the provisions of section 5 of the Suits in Admiralty Act, as amended by Pub. L. 877, 81st Congress, (64 Stat. 1112; 46 U.S.C. 745) will not constitute a compliance with the requirements of this order. The claim shall contain facts sufficient to constitute a basis for the examination, consideration, and administrative allowance or disallowance of such claim and shall include, with respect to the seaman involved, the name of the vessel on which he was serving at the time the claim arose, the seaman's name, his certificate or identification number, his mail address and legal residence if different, date and place of birth, and the year, month, day and hour when and the particular locality where the cause of the claim occurred, together with the facts and circumstances leading up to and surrounding the event out of which such claim arose. This order does not require that the claim be sworn to by the claimant; however, it is subject to Title 18, United States Code, sections 287, 1001 (62 Stat. 698, 749) and other penal laws which pertain to making any false, fictitious or fraudulent claims, statements or entries, or to falsifying, concealing or covering up a material fact in any matter within the jurisdiction of any Department or Agency of the United States. If injury, illness, or death is involved, the claimant shall attach copies of all pertinent clinical records and reports when the claim is filed; in the event that any of such records or reports are not then available to the claimant for attaching, he shall authorize the Maritime Administration in writing to obtain such information, clinical records and reports from the hospitals or physicians who examined or treated the seaman in connection with the injury, illness or death. Said authorization shall include the names and addresses of the hospitals and physicians concerned.

Sec. 5. Filing of claims.

(a) Claims may be filed by or on behalf of seamen of their surviving dependents, beneficiaries or legal representatives. Claims shall be filed either by personal delivery or by registered mail.

(b) Every claim (except claims which shall be filed with the Chief, Division of Insurance, Maritime Administration, as provided in paragraph (c) of this section) shall be filed with the General Agent of the vessel with respect to which such claim arose, or with the Director, National Shipping Authority, Maritime Administration, Department of Transportation, Washington, D.C.

(c) A claim based upon any insurance policy issued by the Maritime Administration (except claims for loss of or damage to personal effects if the seaman is alive, bonuses, detention and repatriation benefits) shall be filed with the Chief, Division of Insurance, Maritime Administration, Department of Transportation, Washington, D.C.

Sec. 6. Notice of allowance or disallowance.

The General Agent, the Director, National Shipping Authority, or the Chief, Division of Insurance, Maritime Administration, as the case may be, shall give prompt notice in writing of the allowance or disallowance of each claim, in whole or in part, by mail to the last known address of, or by personal delivery to, the claimant or his legal representative. In the case of administrative disallowance, in whole or in part, such notice shall contain a brief statement of the reason for such disallowance.

Sec. 7. Presumed disallowance.

If written notice of allowance or disallowance of a claim is not given in accordance with section 6 of this order within sixty days following the date of the receipt of such claim by the proper office as designated in section 5 of this order, such claim shall be presumed to have been "administratively disallowed" as provided in section 1(a) of Pub. L. 17, 78th Congress, quoted in section 2(b) of this order.

Sec. 8. Court action.

No seaman or his surviving dependents or his beneficiaries or his legal representatives, having a claim specified in subsections (2) and (3) of section 1(a) of Pub. L. 17, 78th Congress, quoted in section 2(b) of this order, shall institute a court action for the enforcement of such claim unless such claim shall have been prepared and filed in accordance with sections 4 and 5 of this order and shall have been administratively disallowed in accordance with section 6 or section 7 of this order.

PART 328—SLOP CHESTS

Sec.
1. What this order does.
2. General Agent's requirements.
3. Master's requirements.
4. General provisions.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 11, 23 Stat. 56; 46 U.S.C. 670.

Section 1. What this order does.

In accordance with the provisions of section 11 of the act of Congress approved June 26, 1884, 23 Stat. 56; 46 U.S.C. 670, this order requires all vessels operated by the National Shipping Authority under General Agency Agreement 3-19-51, Amendment 8-65, to be provided with a slop chest subject to all limitations contained in said act.

[OPR-1, 16 FR 4137, May 5, 1951, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. General Agent's requirements.

The General Agent shall:

(a) Obtain from the Master, a requisition for slop chest items required for the intended voyage. Purchase for the account of the NSA, from recognized bona fide slop chest suppliers, at prices not in excess of the fair and reasonable level prevailing at the respective domestic ports, only such items and quantities reflecting past experience of actual requirements.

(b) Arrange for delivery on board to the custody of the Master all slop chest items purchased, together with a copy of the vendor's invoice showing items, units, unit cost and totals.

(c) Furnish the Master with a Slop Chest Statement showing on hand at the beginning of each voyage the items, units, unit cost, totals and selling price per unit of each item. The selling price shall approximate but not exceed 110 percent of the reasonable wholesale value of the same at the port at which the voyage commenced. The Slop Chest Statement shall also provide spaces for:

(1) Quantities and total value sold.

(2) Quantities and total cost value on hand, end of voyage.

(3) Quantities of each item required for next voyage.

(d) Submit to the Coast Director in the district in which the General Agent is located, upon termination of each voyage a copy of the Slop Chest Statement obtained from the Master as provided for in section 3(b) of this order and a copy of all invoices for slop chest purchases showing items by brand or trade name, unit cost and total.

(e) Account to the cognizant Coast Director for the purchase, delivery to the Master, receipts from sales, condemnations, transfers and all other transactions in connection with slop chests.

[OPR-1, 16 FR 4137, May 5, 1951, as amended by Amdt. 1, 33 FR 6475, Apr. 27, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 3. Master's requirements.

The Master shall:

(a) Receive and receipt for the quantities of slop chest items delivered on board.

(b) Upon the termination of each voyage complete the Slop Chest Statement referred to in section 2(c) of this order, as to quantities and total value sold, quantities and total cost value on hand at end of voyage and quantities of each item required for the next voyage.

(c) Sell, from time to time as specified by him, any of the contents of the slop chest to any or every seaman applying therefor, at the unit price, specified by the Slop Chest Statement furnished the Master by the General Agent as provided in section 2(c) of this order.

(d) Account to the General Agent for all slop chest items received on board, for all receipts and for all other slop chest transactions engaged in during the voyage.

(e) Cause entry to be made in the ship's log authenticated by the person designated by the Master to be in charge of the slop chest, together with signatures of two other witnesses, for all losses sustained due to fire, water or other damage which renders articles unsaleable. Such log entries shall itemize the quantities damaged and the cost thereof.

(f) Submit a detailed written report to the General Agent covering losses incurred due to damage, theft or pilferage of slop chest items. The report shall be submitted at the termination of the voyage during which the damage, theft or pilferage occurred.

(g) Retain on board, all damaged slop chest items, for survey, removal and disposition by the General Agent at a domestic port.

[OPR-1, 16 FR 4137, May 5, 1951. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 4. General provisions.

(a) All slop chest items, damaged or otherwise, shall be removed or transferred only in compliance with applicable regulations dealing with Property Removals.

(b) In the transfer of a vessel from one General Agent to another General Agent the physical transfer of the complete slop chest shall also be accomplished between the respective General Agents. The General Agents participating in such transfer shall complete and have their respective representatives sign, a joint inventory containing the unit cost price and extensions of all slop chest items, a copy of which shall be submitted to the Division of Operations, NSA, Washington, DC 20590, together with a copy of the Slop Chest Statement for the voyage terminated prior to transfer of the vessel. An additional copy of the Slop Chest Statement shall be submitted to the Comptroller's Office, Division of Accounts, Maritime Administration, Washington, DC 20590.

(c) In pricing the contents of the slop chest, the General Agent shall comply with all applicable regulations of the Office of Price Stabilization, Economic Stabilization Agency.

(d) It shall be the responsibility of each General Agent and Master to exercise reasonable care and diligence in the compliance with the Owner's obligations hereunder and in the protection and disposition of slop chest items.

(e) Neither the General Agent nor the Master shall place insurance on the contents of the slop chest purchased for the account of the NSA.

All slop chests purchased on or after the effective date of this regulation shall conform to the instructions contained in this order.

NOTE: Records and logs referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[OPR-1, 16 FR 4137, May 5, 1951, as amended at 21 FR 8105, Oct. 23, 1956; 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

PART 329—VOYAGE DATA

Sec.
1. What this order does.
2. Voyage numbers.
3. Voyage commencements.
4. Voyage terminations.
5. Idle status period.
6. General provisions.
7. Operation under current GAA/MSTS Southeast Asia Program.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: OPR-2, 16 FR 5950, June 22, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

The General Agents, as appointed by the National Shipping Authority, promulgated under GAA, 3/19/51, shall be instructed in the manner of recording voyage activities of dry cargo vessels operated for the account of the National Shipping Authority.

Sec. 2. Voyage numbers.

(a) The voyages of National Shipping Authority vessels shall be numbered consecutively commencing with voyage No. 1 having the prefixed designation NSA and followed by the General Agents' abbreviated designation and voyage number, as NSA-1/ABC-1.

(b) The continuity of NSA voyage numbers shall not change with berth agency operations or in the transfer of vessels to other General Agents.

(c) The General Agents' designated abbreviation and voyage numbers shall terminate upon transfer of the vessel and the succeeding General Agent shall affix his abbreviated designation and initial voyage numbers, as NSA-13/XYZ-1.

Sec. 3. Voyage commencements.

(a) All voyages shall commence at 0001 hours of the date on which any of the following activities occur first:

(1) Vessel goes on loading berth, or

(2) Vessel sails outward on a new voyage, or

(3) Following termination of the previous voyage as prescribed in section 4(a) of this order.

(4) Following termination of an idle status period as prescribed in section 5 (a) and (b) of this order.

Sec. 4. Voyage terminations.

(a) All voyages shall terminate at a continental United States port at 2400 hours of the date on which any of the following activities were completed, whichever occurs last:

(1) Final discharge of cargo or ballast.

(2) Paying off of crew from sea articles.

(3) Completion of voyage repairs.

Sec. 5. Idle status period.

(a) The General Agent shall place a vessel in idle status during the period of reactivation or deactivation or upon redelivery from Military Sea Transportation Service notwithstanding the fifteen (15) days minimum period as provided for in paragraph (b) of this section.

(b) The General Agent shall place a vessel in idle status, although the voyage may have commenced, whenever and as soon as it is anticipated that the minimum period of inactivity will exceed fifteen (15) days, due, but not limited to: (1) Repairs, (2) labor, (3) awaiting allocation, (4) awaiting cargo.

(c) Should the anticipated period of inactivity terminate prior to the expiration of the 15 day minimum idle status period, except as provided in paragraph (a) of this section, the General Agent shall cancel the idle status and antedate the succeeding voyage commencement to the termination of the previous voyage as prescribed in section 4(a) of this order.

(d) Should an idle status period be established after a voyage has commenced, the voyage shall be suspended for the duration of the idle status period and resumed when the idle status period is terminated.

(e) Idle status periods as defined in this order, shall be established only in continental United States ports.

(f) Idle status periods shall be treated as separate accounting periods.

[OPR-2, 16 FR 5950, June 22, 1951, as amended by Amdt. 1, 17 FR 3830, Apr. 30, 1952; Amdt. 2, 22 FR 165, Jan. 8, 1957. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 6. General provisions.

(a) In cases of overlapping activities and all other questions arising in respect to voyage commencements, terminations and idle status periods as defined in sections 4 and 5 of this order, the General Agent shall immediately inform the nearest Coast Director, or his local representative of the circumstances and submit recommendations for terminating a voyage. The resulting recommendations, decisions and instructions shall be confirmed in writing to the General Agent, with a copy of such correspondence being sent to the Division of Operations, N.S.A., Washington 25, D.C.

(b) In the event a vessel is employed in intermediate voyage or voyages, or in cross trading outside the continental United States, the voyage shall continue until terminated at a continental United States port.

(c) There shall be no voyage terminations outside continental United States ports except in cases of,

(1) Total loss or constructive total loss of the vessel.

(2) Transfer of operations.

Sec. 7. Operation under current GAA/MSTS Southeast Asia Program.

In order to adapt the provisions of NSA Order 35 (OPR-2) to the particular circumstances of the present GAA/MSTS Southeast Asia Program, the following material partially modifying certain sections of that order is published.

For General Agency operations not related to the current GAA/MSTS Southeast Asia Program, NSA Order 35 (OPR-2) remains unchanged and wholly applicable. Except where specifically altered by the material which follows, it also remains applicable to the present situation.

For voyages made under the current GAA/MSTS program only, the following provisions concerning voyage commencements and terminations shall apply in lieu of those appearing in sections 3 and 4 of NSA Order 35 (OPR-

2). Continental United States ports do not include ports in the states of Alaska or Hawaii.

(a) The commencement of the initial voyage shall occur in a continental U.S. port at 0001 hours of the day the vessel is tendered and accepted for use by MSTS. Subsequent voyages shall commence in a continental U.S. port at 0001 hours of the day after either of the following activities occurs:

(1) The previous voyage terminates.

(2) Reduced operational status period terminates and vessel returns to full operational status.

(b) Voyages shall terminate in a continental U.S. port at 2400 hours of the day that the following action is completed:

(1) Paying off of the crew from sea articles.

(c) Since, in all instances, the voyage termination procedure takes precedence over the voyage commencement procedure and since it is mandatory that voyages terminate in a continental U.S. port, the following exception to the requirement of paragraph (b) of this section shall be effective when warranted:

(1) If the vessel completes payoff as in paragraph (b) of this section and takes departure within the same calendar day, the General Agent shall immediately inform the nearest Coast Director of Area Representative of the circumstances and submit recommendations regarding voyage termination. The resulting recommendations, decisions, and instructions shall be confirmed in writing to the General Agent, copy to Division of Operations, Washington, DC 20590.

(d) Where a vessel is employed in intermediate voyages or in cross trading outside the continental United States, the original voyage shall continue until terminated under conditions in paragraph (b) of this section.

[OPR-2, Amdt. 3, 33 FR 6710, May 2, 1968. Redesignated at 45 FR 44587, July 1, 1980]

PART 330—LAUNCH SERVICES

Sec.
1. What this order does.
2. Authority for launch hire.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: OPR-3, 16 FR 12791, Dec. 20, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order prescribes the circumstances under which launch hire will be accepted by National Shipping Authority as vessel operating expense.

Sec. 2. Authority for launch hire.

Launch hire in foreign and domestic ports will be accepted by National Shipping Authority as vessel operating expense, subject to the provisions of Article 5 of GAA 3-19-51 and BAA 9-19-51, only under the following circumstances:

(a) When incurred by the Master of an NSA vessel, or by an agent of NSA or by his sub-agent, for the purpose of properly conducting the owners' activities and business of NSA vessels;

(b) When incurred in transporting liberty parties to or from an NSA vessel with the approval of the Master or the General Agent as properly for account of the vessel owner; and

(c) When incurred for the transportation of workmen required aboard the vessel, if the contract for the work provides that such service shall be for account of NSA, and the launch service is authorized by the representative of NSA or the agent who ordered the work to be performed for account of NSA.

PART 331—AUTHORITY AND RESPONSIBILITY OF THE OPERATOR TO UNDERTAKE TO DECOMMISSION AND DELIVER SHIPS TO RESERVE FLEETS

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AUTHORITY: Secs. 11(a) and 12(d), Merchant Ship Sales Act of 1946, as amended, (50 U.S.C. App. 1744(a), 1745(d)); sec. 204(b), Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950, 64 Stat. 1273, and No. 7 of 1961, 75 Stat. 840, as amended by Pub. L. 91-469, 84 Stat. 1036; Dept. of Commerce Organization Order 10-8, 38 FR 19707, July 23, 1973.

SOURCE: 39 FR 24224, July 1, 1974. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. Purpose.

The purpose of this order is to set forth the responsibilities of an operator for the stripping and deactivation of a MARAD-owned ship preparatory to placing it in the National Defense Reserve Fleet for permanent lay-up.

Sec. 2. Definitions.

(a) *Stripping.* The removal of specified items from the ship or their stowage aboard in designated locations.

(b) *Deactivation.* Work done on both repair and non-repair nature, intended to restore the ship to a state of good repair and to ready it for long term lay-up.

(c) *Operator.* Any individual or organization responsible for the stripping and deactivation of a ship which is slated for permanent lay-up in the National Defense Reserve Fleet.

(d) NDRF—National Defense Reserve Fleet.

(e) D/H—Dehumidification.

(f) C/P—Cathodic Protection.

Sec. 3. Administration of work.

(a) *Specifications.* The Operator shall prepare specifications for the work to be done under this Order.

(b) *Approvals.* The specifications must be approved by the Region Director before work begins, or if bidding is involved, before the bids are solicited.

(c) *Supervision.* The Operator shall properly supervise the work to insure that it meets the requirements of this Order in every respect. Final acceptance of the work by the Region Director shall be required.

(d) *Repairs.* All repairs shall be accomplished unless deferment is approved by Chief, Division of Ship Management.

Sec. 4. Sequence of work.

The operator shall schedule the performance of the various items of work in such way as to achieve an orderly and efficient deactivation with a minimum need for re-performing any item in whole or in part as the work progresses.

Sec. 5. Condition survey.

On completion of all work, a condition survey report shall be prepared reflecting the condition of all parts of the ship, its equipment and appurtenances. Such survey shall be made jointly by the Maritime Administration and the Operator. Deferred items which will require corrective action upon reactivation shall be listed along with the estimated cost of taking each in hand. The survey shall also include all outstanding American Bureau of Shipping and/or U.S. Coast Guard reports and recommendations as well as all notes of protest. One copy of the survey shall be sent to Office of Domestic Shipping, Washington, D.C., one copy to Operator, one copy to N.D.R.F. Superintendent, and one copy to the Maritime Administration Region Office.

Sec. 6. Drydocking.

The Operator shall have the ship drydocked for the following purposes:

(a) *Bottom Survey.* Bottoms shall be sandwashed to permit complete and detailed inspection. Plates and welds which are wasted, pitted, set in, etc., shall be repaired as necessary to meet regulatory body requirements. Thickness of bottom plating shall be measured by use of ultrasonic measuring apparatus to determine its true condition.

(b) *Cleaning and Painting.* (1) *Bottom Coatings.* Prime and/or pretreatment coating and anti-corrosive paints shall be applied over cleaned bottom in accordance with paint manufacturer's instructions.

(2) *Flotation Band.* A six (6) foot band of shell plating from stem to stern including rudder, from four (4) feet above to two (2) feet below line of flotation, shall be sandblasted to bare metal. A coal tar epoxy coating system of not less than 14 mils thickness shall be applied in accordance with manufacturer's instructions (the above work shall not be done unless circumstances warrant, which shall be determined on a ship to ship basis). If the condition of the flotation area is such that it does not require sandblasting, the two coats of anti-corrosive paint referred to above shall be brought up to four (4) feet above line of flotation.

(c) *Anchor Chains.* Anchor chains shall be ranged, washed and gauged. The chain locker and hand pump system shall be drained and thoroughly cleaned. Chains and chain locker shall be coated with approved metal conditioning compound, before the chains are restowed. For ships entering the James River Fleet site, the second and third shots of chain from both port and starboard anchor chains shall be removed and as one length (2 shots) shall be placed on each side of forecastle deck. The anchor and chains shall then be re-connected, less the two shots respectively, and housed as originally.

(d) *Sea chest blanks.* The sea injections and overboard discharge pipes below the flotation line shall be blanked off externally by fitting and welding a steel plate over all such openings. Minimum thickness of plates shall be ½ inch. If strainer plates are required to be removed for installation of blanks, they shall be stowed in a hold designed by the Region Director. All sea chests and overboard discharge pipes shall be thoroughly cleaned and coated internally with metal conditioning compound.

(e) *Stern tube.* For ships going to the James River Reserve Fleet each ligum vitae stern tube shall be filled with approximately 400 pounds of approved sea cock grease. The grease shall be injected into the stern tube through the water service line at after peak bulkhead, after which the line shall be reconnected and inlet valve left shut. Care shall be taken to ensure that the water service pipe in way of after peak tank is in good condition. The injection of the grease must be witnessed by the Maritime Administration representative, after which a tag shall be attached to the stern gland showing type of grease used, quantity and date. For all ships fitted with oil lubricated stern tube bearings, the oil reservoirs shall be filled with approved lubricant.

(f) *Tanks.* Peaks, voids and double-bottom tanks which have been used for storing fresh or salt water shall have bleeder plugs removed and shall be thoroughly drained and cleaned. All residual standing water remaining after draining or flushing shall be dried. Where salt water has been stored, the tank shall be thoroughly flushed out with fresh water. Only clean fresh water shall be used if any of these tanks are to be ballasted for stability purposes and this water shall not be added until completion of the foregoing steps.

(g) *Sea Valves.* After the sea chests have been blanked off, any sea valve or steaming out valve that is installed in such manner that it may hold water in the body of the valve shall be drained by slacking off the bonnet or by other suitable means. In addition, all sea valves shall be coated internally with metal conditioning compound, after which they shall be left tightly closed. Connecting lines shall be broken at the valve flange to promote better diffusion of air throughout the line.

(h) *Rudder—Upper Pintle.* One ⅜" diameter hole shall be drilled through gudgeon and composition bushing to pintle. The hole shall be cleaned thoroughly and tapped for fittings in order to install standard type grease fitting. The upper pintle shall be pumped up with approved type lubricant, using high pressure lube outfit while rudder is in motion.

Sec. 7. Items to be removed from ship.

The Operator shall remove the following items from the ship and shall dispose of those which are government-owned or government-controlled in a manner to be prescribed by the Region Director.

Acids
Aids, navigation (Charts and Publications)
Ballast, liquid and loose aggregate (Unrequired for stability)
Batteries, dry cell.
Batteries, alkaline (except Nicad)
Batteries, lead acid
Books, bell
Books, library
Books, log
Chemicals, water testing
Compounds, boiler
Cordage, scrap
Cylinder, gas (except CO^2)
Dunnage
Equipment, rented
Firearms, including ammunition
Firehose, remove if old
Greases
Inflammables
Lifeboat rations, water, etc.
Life Rafts
Medicines
Narcotics
Paints
Pyrotechnics, all
Stock bar (steward's dept.)
Stores, slop chest
Stores, subsistence
Supplies, medical
Typewriters, old

Material removed from the ship to another Maritime Administration activity shall be covered by a Property Transfer Notice. All other material removed from the ship for disposition must be covered by a listing and as directed by the Region Director. Rented equipment shall be removed before the vessel departs for the NDRF.

Sec. 8. Items to be left aboard ship.

The operator shall leave aboard all items which have not been listed under section 7 and have been judged serviceable by the Region Director. These items include, but are not limited to, the following:

Antenna, radio
Ballast, poured concrete
Barometers
Batteries, nickel-cadmium
Binnacles
Binoculars
Blocks, portable
Blueprints
Books, instruction
Boxes, storage
Canvas
Chronometers
Clocks
Clinometers
Clothing (steward's dept.)
Compass, magnetic
Cordage
Correspondence, ship's
Davits, small goose-neck
Equipment, galley
Equipment, medical (instruments, litters, etc.)
Equipment, office
Equipment, painting
Equipment, pantry
Equipment, safety
Falls, boat
Fans, room
Floodlights, detachable
Flags
Fire Extinguishers
Fire hose—leave aboard if new
Fuel, bunker "C" (between 500-1000 bbls. in settling tanks only)
Fuel—diesel
Furnishings, room
Gangways, brow
Gratings, weather-deck
Guards, pipe
Hoods, binnacle
Instruments, electrical
Ladders, accommodation
Lashings, chain
Lifeboats, complete with outfitting gear
Lights, debarkation (detachable)
Lights, cargo
Linens
Lining, grain and ammunition
Lyle gun
Machines, washing
Machines, ice-making
Mattresses
Meters, portable electric
Micrometers
Name Boards, detachable
Pillows
Radio, crew entertainment
Radio telephones
Reels, wire (including wire)
Refrigerators, domestic type
Repeaters, gyro compass kI25Scanner, radar
Screening, weather-deck ventilating and duct
Searchlights, detachable
Sextants
Signal lights
Sounding machines
Spare parts, direction finder
Spare parts, electrical
Spare parts, fathometer
Spare parts, gyro compass
Spare parts, loran
Spare parts, machinery
Spare parts, radar
Spare parts, radio
Stores,[1] consumable (engine dept)

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[1] Except items listed in Section 7.

Stores,[1] consumable (deck dept)
Stores,[1] consumable (stwds dept)
Tableware
Tachometers
Telephone assemblies, sound-powered weather-deck
Tools, hand
Tools, electric
Tools, pneumatic
Typewriters, new
Watches
Wrenches, propeller and rudder

Openings created by the removal of any of the above items for stowage elsewhere shall be made weathertight. All items left aboard shall be tagged and stored as directed by the Region Director.

Sec. 9. Inventory.

An inventory shall be effected in accordance with contractual provisions. The inventory shall accurately reflect the number of each item left aboard and its location. Storerooms shall be sealed promptly upon completion of the inventory, and all storerooms and areas containing pilferable materials shall be welded shut prior to departure of the ship to the NDRF.

Sec. 10. Limiting drafts.

The draft limits for the several fleet sites are as follows:

Fleet site	*Draft limit (feet)*
James River, Va	24
Beaumont, Tex	16
Suisun Bay, Calif	18

The foregoing are maximum drafts and are not mean drafts. If the ship's draft when ready for delivery to a fleet site exceeds the maximum listed for that site, the operator shall immediately contact the Region Director for further instructions.

Sec. 11. Housekeeping measures.

(a) *Weather Decks.* All foreign materials shall be removed from all decks which shall then be swept thoroughly clean.

(b) *Dry Cargo Spaces.* (1) *Holds.* All surfaces within the holds shall be thoroughly broom cleaned, including, but not limited to, beams, overheads, frames, trunks, decks, tanktops, stringers, pipes, ladders, etc., and the sweeping shall be removed from the ship.

(2) *Deep Tanks.* Dry cargo residue and loose scale shall be removed from all surfaces and tank covers shall then be replaced and bolted down on good gaskets. Tanks used for ballasting shall be drained, dried and cleaned. Manhole plates above the outside water level shall be wedged in a partly open position. Manhole plates below the outside water level shall be closed watertight.

(3) *Bilges.* Bilges, bilge wells, bilge bays and pipe tunnels shall be thoroughly cleaned and dried. Strainer plates shall be stowed adjacent to the openings from which removed. Covers removed from bilges and bilge bays for the cleaning operation shall be marked and stowed as directed. Missing studs and screws shall be replaced as required.

(c) *Cargo Tanks, pipe lines, pumps and pump rooms.* (1) All cargo tanks, cargo pipe lines, pumps, pump rooms, etc. shall be thoroughly stripped, cleaned and gas freed. All cofferdams, steam smothering lines, heating lines and cargo vent lines in their entirety shall be drained, cleaned and gas freed. All loose rust and all scale, exclusive of bonded scale, shall be removed by means of scrapers, hand tools or other methods, from interior surfaces of all cargo tanks and cofferdams, including all fittings contained within these spaces, and interior surfaces of all covers. All dogs and hinges on tank covers and ullage openings shall be freed and preservative applied to the threads.

(2) *Rose boxes and strainers.* All rose boxes and strainers shall be sealed, cleaned and dried.

(3) *Internal tank valves and reach rods.* Internal tank valves and reach rods shall be freed up, coated with preservative and left in operable condition. Valves shall be opened, then backed off one turn.

(4) *Gas Free Certificate.* After the pertinent spaces and equipment have been cleaned and gas freed, contractor shall obtain a gas free certificate and deliver same to Master of the vessel. It shall be the responsibility of the operator to notify the local Maritime Administration office that the Master

has a gas free certificate in force prior to the departure of the ship for the reserve fleet. Gas free certificates are to be turned over by the Master to the fleet superintendent or his representative on arrival of the ship at the NDRF.

(5) *Dehumidification—Cargo Tanks.* In general, it is not intended to place cargo tanks and cargo pump rooms under D/H protection; therefore, deactivation measures performed in these spaces should be geared accordingly. Exceptions to the foregoing, designed to permit the application of D/H to selected cargo tanks and/or cargo pump rooms, will be determined by local Maritime Administration representative with the approval of the Region Director.

(6) *Preservation of Cargo Tanks.* All tank interior surfaces, including bulkheads, overheads, bottom, sides, expansion trunks and covers, etc., shall be liberally coated with preservation oil. External surfaces of cargo pipe lines, cargo valves, remote control apparatus and other appurtenances located inside cargo tanks shall also be coated in a similar manner. The mechanical atomization spray method of application shall be utilized.

NOTE: Where special paint coating system has been used in cargo tanks, they shall not be coated with preservation oil. In areas where breakdown of paint system has occurred, all loose rust and scale shall be removed and surfaces coated with preservation oil.

(7) *Preservation of Cargo Pipe and Tank Vent Lines.* Cargo pipe lines and tank vent lines shall be preserved by flooding all cargo lines and tank vent lines with preservation oil. This shall be accomplished before vessel is towed to the NDRF.

(d) *Machinery spaces.* (1) *Rooms.* Storerooms, fan-rooms, adjacent passageways, etc. shall be swept clean and left free of debris. All supplies and equipment in storerooms shall be neatly stored at least 4" clear of deck and ship sides. Spare parts boxes weighing over 50 pounds shall not be tiered.

(2) *Bilges and Tank Tops.* All foreign materials including water shall be removed from the bilges and tank tops.

(3) *Other spaces.* The surfaces within the machinery space proper shall be thoroughly broom cleaned, including shaft alley and steering gear flat, all beams, overheads, frames, trunks, floor plates, gratings, ladders, stringers, pipes, external surfaces of boiler and turbine casing, etc.

(e) *Living spaces.* All staterooms, heads, washrooms, recreation rooms, adjacent passageways and locker space including areas beneath furniture shall be broom cleaned. All portlights shall be dogged down and ventilators and windows closed. Furniture shall be left in place.

(f) *Ship control spaces.* The pilot house, chartroom, gyro room, radio room, offices and adjacent passageways shall be broom cleaned in the manner required for living spaces.

(g) *Galley and pantry spaces.* (1) *Galley and pantries.* Galley equipment including range canopies, exhaust duct, and filters, shall be thoroughly cleaned of grease and foreign material. Any galley gear left in this space shall be cleaned and stowed. Deck and waterways shall be thoroughly cleaned and left in a dry condition.

(2) *Refrigerator boxes.* The refrigerator boxes shall be thoroughly cleaned and the wood gratings stacked on end in the respective boxes. The doors shall be left open and secured to prevent swinging and blocked up to prevent sagging.

(3) *Messrooms.* Messrooms and adjacent passageways shall be cleaned in the same manner as living spaces.

(h) *Bunker "C" and diesel fuel tank spaces.* All water and sludge shall be stripped from these fuel tanks and removed from the ship.

Sec. 12. Deck department work.

(a) *Pipes (sounding) and deck plugs.* Sounding pipes shall be proven clear. Deck fittings and plugs shall be in good condition. The threads of the deck fittings and plugs shall be coated with waterproof grease.

(b) *Hatch covers, 'tween deck.* 'Tween deck hatch beams shall be in place. Hatch boards shall be laid over beams, leaving a 3" air space between boards. Wood strips shall be nailed crosswise to the boards to prevent shifting. Steel pontoons and folding-type hatch covers shall be securely wedged in a partially-open position. All 'tween deck hatch square areas shall have safety chain or wire and stanchions properly put in place.

(c) *Weather deck hatch covers.* After selected equipment, tools, materials, etc. have been stowed in the holds, the hatch covers shall be set in place. Metal pontoons shall have sheet metal strips ⅛" x 8", tack-welded over joints between pontoons and between pontoons and coamings. All surfaces shall be cleaned to bare metal and approved sealing compounds shall be applied at joints between pontoons, coaming and sheet metal strips. All weather deck hatches shall be sealed airtight. Wood hatch covers shall be completely covered with sheet metal of the above-described thickness, lapped 2" and tack welded, sheet to sheet and sheet to coaming. Folding-type hatch covers shall be closed and dogged.

(d) *Scuppers and drains.* Scuppers and drains shall be cleared and cleaned. Drain pipes in poor condition shall be repaired.

(e) *Lifeboats.* (1) *Stripping and stowage.* Lifeboats shall be stripped, except tanks, ridge poles, spreaders, rudders, oars, SOLAS covers and masts and shall be stowed in a designated area on chocks in an upright position and secured or as otherwise directed. Boat deck in way of removed boats shall be roped off with two (2) tiers of wire rope.

(2) *Falls, span wires and manropes.* Lifeboat rigging shall be removed with blocks and marine hardware, coiled, tagged (plastic or metal) and stowed in a designated area.

(f) *Lifeboat davit arms.* Lifeboat davit arms, together with their associated fittings, shall be removed, tagged (plastic or metal) and stowed in a designated area.

(g) *Lifeboat winches, motors and controllers.* Lifeboat winches, motors and controllers shall be removed and stowed in a dehumidified area or as otherwise directed. All opening left by the removals shall be made watertight by blanking with ¼" steel plate. Cabling shall be disconnected (not cut) from the equipment and pulled back into the ship or safe ended.

(h) *Lifeboat motors.* Lifeboat motors shall be completely drained of all water, oil and gasoline.

(i) *Accommodation ladders and brow gangways.* All accommodation ladders and brow gangways including rigging and hardware shall be stowed as directed. All unguarded areas shall be protected by use of wire rope or chain.

(j) *Cargo Gear.* (1) *Booms and masts (Dry Cargo).* All booms shall be unshipped with goosenecks attached and stowed in a 'tween deck area (not in square of hatch) on blocks and secured. No burning of shackles or fittings is permitted. Goosenecks shall be coated with preservative compound. All wire shall be neatly coiled and wire and gear tagged and stowed in a D/H 'tween deck area.

(2) *Booms and Masts (Tanker).* All booms shall be lowered into the cradles, properly wedged to prevent them from resting on the metal of the cradle, and properly wedged under the goosenecks to prevent them from freezing in sockets. Goosenecks are to be coated with preservative compound.

(3) *Telescope and other masts.* Telescopic top masts shall be lowered and housed. Signal and antenna masts where hinged shall be lowered in their cradles and secured.

(4) *Radio antenna.* Radio antennae and insulators shall be taken down and stowed.

(k) *Fire fighting equipment.* (1) Master CO_2 controls shall be disconnected, all CO_2 bottom stop valves tightly closed and CO_2 rooms locked and sealed.

(2) Portable extinguishers of foam and soda and acid type shall be emptied, washed out and stored as directed.

(3) All CO_2 portable extinguishers shall be left in place.

(4) Nozzles, spanners, spray nozzles and fire axes shall be placed in a sealed storeroom.

(5) All foamite extinguishers shall be emptied and chemicals removed and disposed of. Extinguishers shall be left dry and stowed with hose and nozzle in sealed storeroom.

(l) *Turnbuckles.* Turnbuckles on mast shrouds shall be slacked off about a dozen turns, the exposed threads heavily greased, tightened to

best copy available

former position and the whole assembly coated with a water-resistant grease.

(m) *Pipe guards.* Weather deck pipe guards shall be dismantled, numbered and stowed in adjacent tween decks.

(n) *Roller chocks and fairleads.* Roller chocks and fairleads shall be checked and repaired, thoroughly lubricated and left in a freely-rotating condition.

(o) *Radar scanner.* Radar scanner and motor assembly shall be removed and stowed as directed. Cap off and make watertight in way of removals.

(p) *Hull, superstructure and decks.* Hull, superstructure and weather decks shall be thoroughly examined. Defective areas shall be sand-blasted and a compatible primer and top coating applied. Audio-gauging and repairs to the hull, superstructure and weather decks shall be carried out to meet regulatory body requirements.

(q) *Weather deck gratings.* All wood and aluminum gratings shall be removed from all weather decks, tagged for identification and stowed in D/H area or as directed.

(r) *Coatings.* Coatings shall be intact and of such quality that during the ship's first two years in the NDRF, no exterior preservation will be required.

Sec. 13. Machinery department work.

(a) *Drainage.* (1) *Machinery drainage.* All machinery, including main engine and auxiliaries of all types, shall be thoroughly drained on the steam and water ends. Bonnets and plugs shall be wired adjacent to openings. Drains shall be cleared with a probe. All valve chest plates shall be slacked off. Where necessary drainage shall be accomplished by breaking of joints. Disturbed joints shall be marked.

(2) *Piping systems.* All piping systems throughout the ship shall be thoroughly drained by blowing out with air. Plugs and valve bonnets shall be wired adjacent to openings. All disturbed flanges shall be marked. All sanitary traps, toilet bowls, sinks and wash basins shall be dried out, trap plugs removed and attached to fixture where removed. Inaccessible shower traps shall be blown out with air. All toilet and washroom doors shall be locked after inspection of the vessel prior to departure for the fleet site.

(3) *Condensers, coolers, heaters.* All condensers, coolers and heaters shall be thoroughly drained on the steam, fresh and salt water sides. Water boxes shall be thoroughly scaled and cleaned. Tube sheets and interiors of tubes shall be cleaned. Access plates shall be left ajar for ventilation.

(4) *Evaporators and distillers.* The salt and contamination water evaporators and distillers shall be thoroughly cleaned, rinsed with fresh water, drained, dried and left open for air diffusion.

(5) *Feed water heaters.* All feed water heaters shall be thoroughly drained on the steam and water sides.

(6) *Tanks, potable, distilled water and service.* All water tanks shall be drained, opened up, cleaned and dried out. Manhole plates shall be wedged ajar for air circulation. Handhole plates shall be wired adjacent to openings.

(b) *Boilers Main.* (1) *Water sides.* (i) The water sides of boilers, including economizer and superheater tubes, shall be thoroughly flushed with fresh water and cleaned of all loose scale, mud and other foreign materials. After cleaning, all parts shall be drained and dried out. One access cover plate shall be removed from each of the following: steam drums, mud drums, water wall headers, superheaters and economizers. The removed handhole plates, together with dogs and nuts, shall be wired adjacent to their respective openings. Boiler casing doors and inspection plates shall be removed, stowed and secured adjacent to their respective boilers. Burners shall be removed, cleaned and stowed in the engine room storeroom.

(2) *Firesides.* The firesides of the boilers, including wind boxes, stack, uptakes, economizers (access opening to be provided if not already present), superheaters, air heaters, space between inner and outer stack, etc. shall be thoroughly cleaned of all deposits. Under no circumstances shall water or steam be used in cleaning the firesides of any boiler after final shut-down. The interior of the forced draft system and the air side of air heater shall also be thoroughly cleaned.

(3) *Special drainage requirements.* Immediately after boilers are shut down, all machinery on steam and water sides, all water, air, steam and exhaust lines throughout ship, radiators, heaters, D/B heating coils, toilets, traps, feed heaters, condensers, ejectors, evaporators, inspection tanks, service tanks, domestic tanks, coolers, loop seals, deaerators, line shaft bearings, emergency generator, etc. shall be drained. All valve bonnets, plugs, or their parts removed for drainage shall be wired to adjacent part or opening. All disconnected piping for drainage shall be reconnected with new gaskets as original. Any piping required to be left open shall be marked.

(4) *Refractory.* Refractory and insulating material shall be removed from the boilers as necessary to permit thorough inspection of all tubes, nipples, risers and headers and to insure their total exposure to the flow of dry air under D/H. All the debris created by this operation shall be removed from the ship.

(c) *Boilers, auxiliary.* Steam heat and waste heat boilers shall be cleaned on the water side and dried out. The fire and/or exhaust gas sides, including uptake and stack, shall be thoroughly cleaned of all soot and other residue. One manhole plate and one handhole plate shall be removed (if existing), and wired adjacent to their respective openings. Steam or water shall not be used for cleaning firesides of boilers.

(d) *Diesel engines, main and generator engines.* Water jackets, heat exchangers and associated water pumps and piping shall be thoroughly drained. All openings for drainage shall be left open. The exhaust manifolds and exhaust stack, including intake and exhaust silencers shall be opened, cleaned and left open. All lube oil shall be removed from the crank cases and sumps by pumping such oil into a settling tank. The sumps, crank cases, filters and strainers shall be thoroughly cleaned and closed up as before. Each sump tank shall be filled with sufficient clean lube oil which shall be circulated through the systems under pressure.

While the oil is being circulated, the engines shall be jacked over five complete revolutions. At the conclusion of this operation, the clean oil left in the sump tanks shall be pumped back to the reserve tanks. Line shaft bearing sumps shall be cleaned and the bearings flushed with clean lube oil. Selected access plates shall then be left ajar for ventilation. The daily-service fuel tanks shall be pumped out, thoroughly cleaned and closed up as before. Fuel oil injectors shall be removed, thoroughly drained and shall be properly stowed in the engineer's storeroom. Fuel lines shall also be drained. Injection openings shall be screened.

(e) *Lubricating oil systems.* All lubricating oil shall be transferred from the sump tanks of all machinery to a reserve tank. Sump tanks shall then be opened, thoroughly cleaned and reclosed as before. Sufficient clean lubricating oil shall be dropped to each sump tank and circulated through each respective system. While the oil is being circulated, each turbine unit, both main and auxiliary, shall be jacked over sufficiently to obtain at least one full revolution of the main shaft. After completion of jacking and oil circulation, the oil in the various sump tanks shall be pumped back to a reserve tank and sumps left empty. Auxiliary machinery lube oil sumps (including sumps of line shaft bearings) shall also be drained, cleaned and bearings flushed with clean lube oil. Sumps shall be left dry and sump covers left ajar.

(f) *Centrifuges.* The lube oil, oily water and fuel oil centrifuges shall be opened and thoroughly cleaned. Sediment drain tanks shall be thoroughly cleaned and left open.

(g) *Deaerating feed water heater.* The deaerating feed water heater shall be opened, cleaned and the access plate replaced slightly ajar.

(h) *Refrigeration and Air Conditioning Systems.* The Freon systems (except domestic type) shall be tested for tightness and charged to capacity. Sufficient oil shall be added to the compressors to bring the oil level above the top of the shaft seal. The compressors are to be tagged with metal or plastic tags to show all of the precautions taken.

(i) *Valves.* Settling tanks valves and those affecting seaworthiness, shall be left closed; all other valves shall be left with their valve discs raised off the seat. Valves and their reach rods shall be left in good working order.

(j) *Carbon rotor packing.* The packing on main and auxiliary turbine rotors shall be removed, wrapped, tagged and placed in engine storeroom.

(k) *Soft packing.* The packing shall be removed from piston rods and valve stems of all reciprocating pumps (except liquid end of lube, hydraulic and fuel oil pumps) and from the shaft packing glands of all rotary and centrifugal pumps (except lube, hydraulic and fuel oil pumps).

(l) *Ship's Whistles.* The whistles shall be removed and stowed in the D/H area. The opening left in the stacks shall be blanked off by welding a plate over it.

(m) *Sewage disposal tanks.* All sewage disposal tanks shall be pumped out, opened up, washed down, thoroughly cleaned and dried. Covers shall be reinstalled in an ajar position and all remaining securements shall be packaged and wired to tanks.

(n) *Elevators and dumbwaiters.* Elevators and dumbwaiters shall be secured. Pits shall be cleaned. Counterweights shall be landed on blocks, cables removed and car lowered to bottom of well. Blocks shall be arranged to allow access beneath elevator.

(o) *Chlorinator and retention tanks.* Chlorination and retention tanks shall be cleaned and left open.

(p) *Tagging of removed equipment.* All equipment stored in D/H areas shall be properly tagged. Tags shall be of a permanent type attached by wire.

(q) *Motors and generators.* All motors and generators shall be cleaned of all dirt and excessive oil, and grease. Brushes shall be left in place with their spring tension released, clear of rotating element.

(r) *Cargo winches.* Cargo winches and pedestal controls shall be removed and stored in the lower D/H holds. Openings created by the removals shall be made watertight. Cabling within the pedestal foundation shall be pulled back into the ship.

(s) *Vent fans and motors.* All weather deck vent fans and motors shall be removed, tagged and stowed below under D/H. All openings shall be sealed.

(t) *Electrical receptacles and lighting fixtures.* All weather exposed electrical receptacles and lighting fixtures shall be closed. Missing caps, covers, wire guards, and vapor globes shall be replaced.

(u) *Nickel-Cadmium batteries.* All battery feeder leads shall be disconnected and tagged. The tops of the batteries and the battery trays shall be cleaned and dried. All cells shall be filled with "Colloil" or other product recommended by the battery manufacturer. All vent caps shall be closed.

(v) *Megger readings.* Insulation resistance readings shall be taken of all generators and motors on vessel, except those of fractional horsepower. The results of these readings shall be included in the condition survey.

(w) *Main radio installation.* (1) All switches shall be opened.

(2) All spare tubes, spare parts, tools and loose equipment shall be placed in spare parts boxes and stowed in a sealed storeroom.

(x) *Speakers and amplifiers-open deck.* All speakers, amplifiers and talk-back speakers shall be removed, tagged and stowed in D/H area.

(y) *Flooding and fire alarm systems.* Flooding and fire alarm systems shall be installed in the manner to meet the Maritime Administration's requirements.

Sec. 14. Dehumidification.

On ships selected for dehumidification, the following work shall be performed:

(a) *Dehumidification system.* (1) The dehumidification system shall consist of D/H machinery, duct work, piping (and other means of air transmission), zoning and auxiliary devices, with associated wiring such as hygrosensor units, switches, junction boxes, elapsed time indicators, circuit breakers, etc., as required to maintain the insides of the ship at an acceptable level of preservation through the use of dehumidified air. When zoning is required, the maximum area to be dehumidified shall be 400,000 cubic feet for each 500 CFM machine. The D/H machine shall be an approved type that has a moisture removing capacity (MRC) of seven (7) pounds per hour when the air to be dried (inside air) has an R/H of 35 percent at 70° F dry bulb with a pressure differential of 5″ water gauge. Machines are to be new and include a supply of spare parts for two years' operation, and assured available spares from the manufacturer for an additional three years.

(2) Plans shall be furnished the Maritime Administration which clearly indicate the arrangement of the D/H system, including locations of the machine, directional flow distribution and modulation of dry air, location of hygrosensor stations, visual alarm panels, circuit breakers, main disconnect switch, power supply and control circuits.

(3) A D/H control-alarm system shall be installed that will continuously and automatically control the relative humidity (R/H) at a preset level, within a dehumidified zone, and at a central location to indicate whether the humidity factor high or low is being maintained at a prescribed level. This system must sense and control the R/H from four (4) individual stations within each zone.

(4) Power supply at the fleet sites are 3-phase, 460 volt AC. Shore power connection shall be provided topside to permit the distribution to the D/H machine(s). The electric source shall contain one 3 pole disconnect switch (unfused) located topside and an individual 3 pole circuit breaker for each machine. Cables shall be neatly triced overhead in such a manner as to prevent a safety hazard.

(5) Reactivation air inlet and outlet ducts shall be of a size recommended by the D/H machine manufacturer and shall be spaced a minimum of 4′ apart or fitted with elbows to provide this distance between the two openings. All reactivation cycle ducting shall be of rigid galvanized steel or rigid aluminum, screened and inclined downward for proper drainage.

(6) In the installation of duct work, the female end of each section shall face the direction from which the air flows. Duct joints shall be secured together with metal screws and then taped to make airtight joint.

(7) The system shall be operated and tested to the satisfaction of MarAd representative to ensure proper installation and distribution of dry air from the dehumidifier to spaces and machinery and back to the dehumidifier.

(8) D/H machine(s) shall be installed within the D/H zone at a convenient location where it will be readily accessible from all sides for easy servicing. D/H machines shall be set level both fore and aft and athwartship.

(b) *Blanking and Sealing for D/H.* (1) *Access to the interior of the ship.* Access to the ship's interior shall be limited to one or two exterior doors. All other exterior openings shall be permanently closed, sealed and made airtight. The access doors shall be fitted with a hasp and bale or other suitable means of preventing unauthorized entry.

(2) *Main stack.* All stack openings to the atmosphere, including atmosphere escape pipes and other exhaust pipes through which air would enter the machinery spaces or boilers, shall be closed airtight with a welded steel plate cover or covers of suitable thickness to suit existing conditions. All access hatches or manholes in stack decks shall be dogged or bolted down airtight.

(3) *Inner stack openings.* Two openings, each approximately 6″ in diameter, shall be cut about two feet (2′) from top of inner stack on opposite sides of the circumference for air diffusion. Cut outs shall be tack welded at openings for future replacement.

(4) *Diesel Engine exhaust stacks.* Diesel exhaust stacks shall be removed at a convenient point. The removed sections of stacks shall be stowed and secured adjacent to diesels. Welded steel plates shall be fabricated and installed over openings. Installation shall be tested and proved airtight. New work and disturbed areas shall be primed.

(5) *Galley stack.* The galley stack, if so fitted, shall be cropped off approximately 48″ above deck and stack stowed in the 'tween deck. The stump shall be closed off airtight with a

welded steel cover of suitable thickness.

(6) *Ventilators.* Cowl and mushroom type ventilators leading to machinery spaces and/or housing shall be removed and stowed in adjacent 'tween decks. The stumps shall be closed off airtight with welded steel plate covers, of suitable thickness or if stump is provided with a spider, the cover shall be secured by means of a rudder gasket and center bolt through spider.

(7) *Skylights.* All skylights serving machinery spaces and adjacent housing shall be closed off airtight by means of a welded steel plate over each opening or by other suitable means as determined by the local Maritime representative.

(8) *Ventilation openings.* All intake and exhaust openings in housing and king posts leading to machinery spaces and housing, that are not provided with a gasketed hinged metal cover, shall be made airtight with suitable steel or sheet metal covers. The type of covers and securements of same shall suit existing conditions.

(9) *Weather deck closures.* Portlights, windows, scuttles, weathertight metal doors, etc. shall provide for airtight closure. All gaskets are to be in good condition and shall be renewed where found necessary.

(10) *Exterior wood doors.* Doors, door closures and hinges shall be removed and stowed in D/H area. A galvanized sheet metal blank shall be installed over entire weather side of doors and associated frames, using wood screws and approved calking and sealing compounds to insure airtightness.

(11) *Deck scuppers.* Deck scuppers shall be flushed out and proven free and clear. Scuppers that pass through the interior of the ship shall be blanked at deck level with welded steel plate. All removed strainer plates and securements shall be tagged and put in convenient lockers. Half moon drain holes, approximate size 4" × 2" shall be cut on each side of blanked scuppers on coaming around the houses or the gunwale bar at shell. Removed sections shall be tack welded adjacent to the cut outs.

(12) *Overboard discharge openings above flotation lines.* Scupper extensions (guards) shall be removed as required to permit installation of blanks. All subject openings shall be blanked off with ⅛" mild steel plate.

(13) *Sealed storerooms.* Each storeroom designated by Region Director for the storage of highly pilferable and valuable items shall have its door welded shut with one inch increments every foot around the perimeter after storage has been completed. Ventilation shall be provided by an opening of one square foot or more suitably grilled to prevent entry. A humidity sensing device shall be installed in each storeroom that is to be permanently sealed, in a manner and location to be designated by the Region Director.

(c) *Air test requirements.* (1) *Overall D/H Envelope.* Using a 500 CFM fan, or other type of air mover of similar capacity sealed into the D/H boundary, air shall be steadily exhausted to the outside atmosphere. The resulting pressure differential created between the outside atmosphere and spaces within the envelope shall be measured with a manometer or other suitable air pressure guage. Upon obtaining a pressure difference equal to 3" of water, the air mover shall be secured and the opening blanked off at the weather side. The pressure differential shall not drop lower than a reading of 2" of water during a waiting period of 20 minutes.

(2) *Inner zones within a multi-zone ship.* Inner zones within a multi-zone ship shall be subjected to a pressure difference equal to 1¼" of water, the air mover secured and opening blanked at weather side. Pressure differential shall not drop lower than a reading of ¼" of water during a waiting period of 20 minutes.

(d) *Ventilation of Machinery.* (1) *Main and auxiliary turbines and reduction gears ventilation of.* Valve discs and springs shall be removed from relief valves on main and auxiliary turbines and secured to their respective bodies. One nozzle block valve bonnet on the H.P. turbine shall be blocked open. In addition, all inspection opening covers on both the main auxiliary turbine casings shall be blocked open. A minimum of eight inspection covers on each main propulsion gear casing shall be blocked open. On units with smaller gear trains, such as generators, two inspection covers, one as high as possible and the other as low down as practicable, shall be blocked open not less than one inch.

(2) *Main and auxiliary condensers, lube oil coolers and other heat exchangers.* Inspection opening covers shall be removed from the salt water box at each end of each condenser and one cover from the hot well of each condenser. Each cover shall be positioned on one of the stud bolts from which it was removed so that it will not obstruct diffusion of dry air through the condenser. The cover shall be positioned on the stud with one of the nuts which originally held the cover in place. The remaining nuts should be threaded on the stud's full thread. The same general procedure shall be followed for the ventilation of other heat exchangers (air ejectors, distillers, water heaters, air receivers, etc.). Where a unit is not provided with inspection openings, plugs and/or inlet and outlet valve bonnets shall be removed. Caution and good judgment should be exercised when this work is accomplished. Any valves, fittings or equipment which if tampered with might result in flooding of the ship or spilling of fuel oil should not be included. The intent of the foregoing is to provide the minimum number of openings which will be needed to ensure diffusion of dry air throughout each unit.

Sec. 15. Towing to fleet.

The operator shall:

(a) *Permit.* Obtain a U.S. Coast Guard permit, if such is needed, to tow the ship from the port of delivery and/or deactivation to the fleet site designated for permanent lay-up.

(b) *Riding crew and towage.* Arrange for tugs and riding crew to handle the movement of the ship.

(c) *Food.* Remove subsistence stores for the use of the riding crew before the crew departs from the ship at the fleet site.

(d) *Steering gear.* Secure the rudder in a midship position while ship is under tow.

(e) *Anchor windlass, steam.* Remove the section of steam line adjacent to the steam valve on the anchor windlass and secure with wire adjacent to the windlass. Install a flange on a steam valve with 1½" pipe connection for air hook-up; remove the exhaust valve on the anchor windlass and secure with wire to the exhaust line; blank off the steam and exhaust lines leading aft; open all drains and remove any condensate from throttles, cylinders and steam chests; coat exposed moving parts with preservative; test the steam and/or electric anchor windlasses and leave ready for service.

(f) *Navigation equipment.* Make available the necessary lights, signals and equipment for towing as directed by the Region Director. Upon delivery of the vessel at the fleet site, this equipment shall be removed.

(g) *Mooring wires.* Provide mooring wires for use at the NDRF as directed; remove insurance wires from reels and fake out on deck, one forward and one aft; neatly coil and tag all other wires and stow in D/H areas.

(h) *Shaft lock.* Secure the propulsion shafts on all ships by use of a keeper plate on tailshaft coupling. In no instance shall the jacking gear be left engaged to act as a brake.

(i) *Heaters.* Under no circumstances shall unvented heaters or stoves be used by riding crews.

(j) *Policing.* Immediately prior to the ship's arrival at the fleet site, police the areas of the ship used by the riding crew and leave in a clean and orderly condition.

(k) *Inspection.* Upon arrival of the ship at the fleet site, fleet officers will inspect the ship along with the riding Master to determine that satisfactory conditions exist relative to sanitation, security and safety.

(l) *Delivery.* The riding Master shall receive a copy of a receipt certifying to the satisfactory compliance with all of the provisions of this section and the delivery of the keys and the ship documents. A sample format of the receipt is set forth as Exhibit A.

Sec. 16. Reports.

(a) *Completion Report.* A completion report shall be filled out and signed by a responsible member of the operator's staff. A sample format is set forth as Exhibit B.

(b) *Cost Report.* A cost report shall be filled out, two copies forwarded to the Chief, Division of Ship Management, Washington, DC 20590, and two copies forwarded to the cognizant Region Director within a reasonable time after delivery of the ship to the NDRF. A sample format is set forth as Exhibit C.

(c) *Certificate of Redelivery.* An authorized "Certificate of Redelivery" furnished by the Maritime Administration shall be processed by the Region Director and forwarded to the operator for execution and return. Five copies of the executed certificate shall be forwarded by the Region Director to the Chief, Division of Ship Management, Washington, DC 20590. The disposition of the ship's Certificate of Registry or Enrollment shall be noted on the Certificate of Redelivery showing date and place of deposit.

Sec. 17. Miscellaneous requirements.

(a) *Certificate of Inspection.* This certificate shall be returned to the U.S. Coast Guard.

(b) *Certificate of Registry or Enrollment.* These certificates shall be deposited in the Office of the Collector of Customs in the district in the area where the ship is to be laid up. The place and date of deposit shall be noted on the certificate of redelivery.

(c) *Radio License.* This license shall be sent to the Federal Communications Commission, Washington, D.C.

(d) *Other papers and keys.* All other ship's papers, and documents shall be delivered by the riding Master to the NDRF representative, together with a list of these papers and documents in triplicate. Combination of ship's safe shall be left with ship's papers, keys tagged and locked in the ship's safe. The NDRF superintendent will give the riding Master a signed receipt for all papers and keys.

(e) *Log books and library.* Merchant Marine library books shall be removed by the Merchant Marine Library Association. All log books and bell books shall be assembled, packaged and forwarded to the Region Administrative Services Officer, with a list of the books in a covering letter. Copies of the covering letter shall in each case be sent to the Chief, Division of Office Services, Maritime Administration, Washington, D.C. and the cognizant Region Director, who shall check each list to ensure completion of submissions. These requirements shall be strictly observed.

EXHIBIT A

U.S. DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

SHIP CONDITION RECEIPT

Date ——————

To: —————————— Operator/Owner of the S.S. ——————————

THIS WILL CERTIFY that the subject vessel arrived at —— A.M./P.M. on —— at the ———— fleet and was found to conform with the acceptance requirements except as noted below.

1. Stability and watertight integrity
2. Cleanliness and sanitation.
3. Storerooms
4. Inventory of ship's documents
5. Keys
6. Remarks:

————————————————

Fleet Superintendent

Note:

Original copy ——— Forward to Cognizant Region Director

Copy ——————— To Riding Master

EXHIBIT B

U.S. DEPARTMENT OF COMMERCE—MARITIME ADMINISTRATION

SHIPOWNER/OPERATORS COMPLETION REPORT

Date ——————

SS
or ————————————————————
MV

SHIPOWNER ——————————————

Prepared for layup at ——————————

Delivered to Reserve Fleet at ——————

Date of Delivery——————————————

The above vessel was prepared for layup in full accordance with USMA instructions.

Signed ——————————

Title ——————————

Representing ———————— ———

Note:

Original copy — To Fleet Superintendent

Copy — To Cognizant Region Director

EXHIBIT C

U.S. DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION

Cost of Preparing for Layup and Delivery to Fleet

Name of Ship ———— Operator————
Date and Place Commenced Layup ————
Finished ————————————
Date Departed for R.F. ————————
Date Entered R.F. ——————————
Name of Contractor ————————
Was Work Negotiated or Bid ————

Expense Incurred from Start of Layup to Delivery at Fleet

Operator Account	
Crew Wages	$
Subsistence	
Lodgings	
Fuel Consumed	
Insurance	
Wharfage	
Pilots (Shifting)	
Tugs (Shifting)	
Linemen (Shifting)	
Watchmen	
Stripping (Operators Material)	
Duty on Removals	
Total	$
Deactivation and Towage	
Preparing for Layup	$
Towing Crew	
Towage to Fleet	
Assisting Tugs (Harbor)	
Pilotage	
Linemen	
Return Transportation	
Other Expenses	
Total	$
Grand Total	$

NOTE: Two copies to Chief, Division of Ship Management, Washington, D.C. Two copies to Cognizant Region Director.

PART 332—REPATRIATION OF SEAMEN

Sec.

1. What this order does.
2. Definitions.
3. Classification of repatriates.
4. Manner of repatriation.
5. Repatriation charges.
6. General provisions.

AUTHORITY: Sec. 204, 49 Stat. 1937, as amended; 46 U.S.C. 1114.

SOURCE: OPR-5, 18 FR 1446, Mar. 13, 1953. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order prescribes the manner in which seamen separated from vessels operated for the account of the National Shipping Authority shall be repatriated and explains how charges in connection with such repatriation shall be handled.

Sec. 2. Definitions.

(a) For the purpose of this order, the term "seaman" shall include every person, irrespective of capacity or rating, whose last service has been on a vessel operated for the account of the National Shipping Authority, upon which vessel he had signed shipping articles and whether or not he had signed off such articles before a consular or other authorized official, but shall not include the master of such a vessel.

(b) The term "General Agent" shall include any designated representative of such General Agent.

Sec. 3. Classification of repatriates.

Seamen in need of repatriation, whether being repatriated to or from the United States, shall be classified as follows:

(a) Seamen separated from their vessels because of the destruction of, abandonment of, or damage to their vessels, or because of termination of shipping articles at a port outside the continental limits of the United States.

(b) Seamen separated from their vessels as the result of illness or injury received in the service of their vessels or otherwise through no fault of their own.

(c) Seamen separated from their vessels for any cause whatsoever not described in paragraph (a) or (b) of this section.

Sec. 4. Manner of repatriation.

(a) A seaman described in paragraph (a) of section 3 of this order shall be repatriated in accordance with the provisions of the shipping articles, or the applicable collective bargaining agreement, employment contract, or statute. If a seaman in this class is repatriated as a passenger, the General Agent of the vessel of which he was last a crew member shall arrange for his passage and pay the amount of expense involved.

(b) A seaman described in paragraph (b) of section 3 of this order may be repatriated as a passenger where space is available and circumstances permit. If applicable collective bargaining agreements, employment contracts, or statutes do not conflict, he may return as a workaway or, at the discretion of the master of the repatriating vessel, he may sign on articles either as a replacement of to complete a vessel's complement or, when deemed advisable by the official authorizing the repatriation and with the approval of the master of the repatriating vessel, he may be signed on the articles as a "repatriated seaman (non-working)". If a seaman in this class is repatriated as a passenger, or repatriate seaman (non-working), the General Agent of the vessel of which he was last a crew member shall arrange for his passage and pay the amount of expense involved.

(c) A seaman described in paragraph (c) of section 3 of this order shall be returned as a workaway or, at the discretion of the master of the repatriating vessel, he may sign on as a replacement or to complete a vessel's complement. Only in unusual cases, and only with the prior approval of the Chief, Division of Operations, shall a seaman in this class be repatriated as a passenger or as a repatriate seaman (non-working). If a seaman in this class is repatriated as a passenger, or as a repatriate seaman (non-working), the General Agent of the vessel of which he was last a crew member shall arrange for his passage and pay the amount of expense involved.

(d) A master shall be repatriated in accordance with applicable collective bargaining agreement, employment contract, statute, or established commercial practice.

Sec. 5. Repatriation charges.

(a) If it is deemed necessary to repatriate a seaman as a passenger aboard a privately operated vessel, plane, train, or other conveyance, the full amount of the reasonably incurred expense in connection therewith shall be billed against the General Agent of the vessel of which he was last a crew member.

(b) If a seaman is repatriated as a passenger, or as a repatriate seaman (non-working), aboard a vessel operated for the account of the National Shipping Authority under a General Agency Agreement, a flat transportation charge of $5.00 per day shall be made for every day spent aboard the repatriating vessel, including day of embarkation and day of debarkation, which charge shall be in addition to necessary train or other conveyance expense, United States and foreign government taxes, port dues, landing fees or other charges of every nature levied in connection with such repatriation. In such a case, the General Agent of the vessel of which the repatriate was last a crew member shall be billed for the amount of expense involved, and appropriate entries covering the receipts and disbursements resulting from the repatriation shall be made in the proper books of account by the General Agent concerned. In the event the General Agent repatriating a seaman is also the General Agent of the vessel on which the seaman last served, it will not be necessary to issue a formal billing, but it is required that appropriate entries be made on the agency books of account to reflect a revenue of $5.00 per day in the account of the vessel rendering the transportation service and that a charge covering the cost of repatriation be recorded against the vessel on which the seaman last served. In all cases, the General Agent charged with the repatriation expense shall take necessary steps to secure reimbursement of such expense from the P & I underwriters insuring the vessel against which the expense is charged. No charge is to be made in the case of a seaman repatriate who signs on vessel articles as a workaway or in any other capacity except as a repatriate seaman (non-working). When repatriation is required, it shall be effected by the first available means considered appropriate by the official authorizing such repatriation.

Sec. 6. General provisions.

(a) In case of repatriation of any seaman as a passenger aboard a vessel operated for account of the National Shipping Authority, the requirements of the applicable collective bargaining agreement or employment contract shall be met. In any event, a seaman repatriate shall receive at least as good accommodations as would be his due while sailing in his capacity.

(b) Unless otherwise directed, a seaman when repatriated as a passenger aboard a vessel operated for the account of the National Shipping Authority, shall be issued a ticket in the form prescribed by the General Agent of the vessel for its own vessels. Such ticket shall be surrendered to the master of the repatriating vessel. When repatriated as a repatriate seaman (non-working), the master of the repatriating vessel shall be furnished with a certificate from the official authorizing the repatriation setting forth that the circumstances require that the seaman be signed on as a repatriate seaman (non-working). The master shall ascertain the seaman's full name and rating, cause of repatriation, and the names of the vessels and the General Agent to be charged with the cost of the repatriation.

(c) It is recognized that the procedure set forth in this order will not cover all situations arising out of obligations to repatriate seamen nor fix ultimate responsibility for repatriation expenses which may sometimes depend upon determinations of fact which cannot be made prior to repatriation. In cases of emergency or in situations not covered in this order, the General Agent shall proceed in accordance with established commercial practice.

(d) Nothing in this order shall be construed to interfere with the proper exercise of authority by United States consular officials relative to repatriation of seamen in accordance with applicable statutes.

PART 333—AUTHORITY AND RESPONSIBILITY OF GENERAL AGENTS TO UNDERTAKE TO DECOMMISSION TANKERS TO BE WITHDRAWN FROM OPERATION AND PLACED IN A RESERVE FLEET

Sec.

1. What this order does.
2. General Agents' responsibilities.
3. General Agents' duties.
4. General provisions.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: OPR-6, Revised, 24 FR 1208, Feb. 17, 1959. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order outlines General Agents' responsibilities in connection with the work required for the proper stripping and deactivation of tankers assigned to reserve fleets, whenever advice is received that a ship is to be withdrawn from operation. Generally, this order also defines the nature and extent of the work required to properly prepare a tanker for layup.

Sec. 2. General Agents' responsibilities.

It shall be the responsibility of the general agent to perform the following: (a) Reduce the ship's personnel to only those necessary to perform or supervise the work involved, as soon as practicable after receipt of instructions to prepare the ship for layup and to remove unnecessary supplies and material from the ship to segregate and hold, deliver, or otherwise dispose of supplies and materials as directed.

(b) Prepare specifications covering deactivation work. The District Office will furnish the General Agent with a standard sample specification for guidance, which is to be amended as necessary after the agent has surveyed the vessel to meet conditions existing on each individual vessel.

(c) Properly supervise the work outlined herein and assure that copies of all specifications are furnished to the local Maritime Administration office and to all department heads and ships' officers employed on board during the deactivation period.

(d) Obtain a United States Coast Guard towing permit when required for a vessel which is to be towed.

Sec. 3. General Agents' duties.

The General Agent for the account of the Maritime Administration shall have the following items of work performed prior to delivering the tanker to the reserve fleet:

(a) *Cargo tanks and appurtenances thereto, ventilators and galley smoke stack.* (1) All cargo tanks, cargo pipe lines, pumps, pump rooms, etc. shall be thoroughly stripped, cleaned and gas freed. All cofferdams, steam smothering lines, heating lines and cargo vent lines in their entirety shall be drained, cleaned and gas freed. Remove all loose rust and all scale, exclusive of bonded scale, by means of scrapers, hand tools or other methods exclusive of mechanical scaling or sand blasting, from interior surfaces of all cargo tanks, cofferdams and dry cargo holds including all fittings contained within these spaces, also interior surfaces of all covers. All dogs and hinges on tank covers and ullage openings shall be freed and grease applied to the threads. Dry cargo holds to be thoroughly cleaned, and secured, dogs and hinges to be freed and greased.

(2) All rose boxes and strainers shall be scaled, cleaned and dried. All deck scuppers to be proven clear.

(3) Internal tank valves and reach rods shall be freed up, greased and left in operable condition. Valves shall be opened, then backed off one turn.

(4) After the pertinent spaces and equipment have been cleaned and gas freed, contractor shall obtain an unrestricted gas free certificate and deliver same to Master of the vessel. It shall be the responsibility of the General Agent to notify the local Maritime Administration office that the Master has a gas free certificate in force prior to the departure of the ship for the reserve fleet. Gas free certificate is to be turned over by the Master to the fleet superintendent or his representative on arrival of the ship at the fleet.

(5) Ventilators: All ventilator cowls shall be unshipped, neatly stowed and well secured, clear of spare parts and manhole covers, in the shelter deck midships or in the dry cargo hold. Ventilator trunks shall be plugged with wood and canvas covered.

(6) Storerooms: All storerooms, deck, engine and stewards, including magazines, are to be swept clean and free of debris.

(7) Smokestack: Close all skylights, doors and hatches to the engine room and fidley. When so directed by Maritime Administration representative, furnish and install cover for stack. Same to be constructed of one-inch tongue and groove kiln dried, pressure-treated boards or equal with proper strengthening on underside, to fit into stack and covered on weather side with substantial waterproof material made watertight. Cover shall be fitted with access hatch about 24 inches square, located over centerline baffle to permit entry of man during stack preservation. Secure cover by means of sufficient wire lashings attached to the stack stays. This item to be completed immediately after the boilers are cleaned.

(b) *Lifeboats and life rafts.* Lifeboats shall be completely stripped of all gear and equipment except tanks, ridge poles, spreaders, rudders, oars and masts. The tanks are to be unfastened but remain in their respective boats. The lifeboats shall be stowed in dry cargo hold. The Maritime Administration local representative may make determinations on ships where lifeboats cannot be stowed below decks that the lifeboats may be warehoused, left on board or otherwise disposed of. Boats stowed in dry cargo hold shall be properly chocked and secured in an upright position at least two feet inboard of the skin of the ship and six inches off the deck. Boats left on board but not stowed in dry cargo hold shall be secured and covered with suitable wooden covers built over each boat. Worm gears on lifeboat davits shall be thoroughly greased. Wire boat falls on gravity davits and boat winches shall be removed, tagged, greased and stowed in sheltered area. When an unstripped lifeboat is required to be left on board in davits for use of a riding crew accompanying the ship to a reserve fleet, the boat shall be left in either port or starboard after davits. Life rafts shall be removed from the vessel. The boat deck in way of removed boats shall be roped off with wire rope or chain securely fastened to welded flat bar stanchions.

(c) *Lifeboat motors.* If lifeboats are stowed on weather decks, the motors are to be removed from the boats, properly drained, tagged, and stowed in a sealed compartment. The motors on lifeboats which have been stowed below decks are to be drained. The gasoline is to be removed from tanks, after which the system is to be flushed with carbon tetrachloride.

(d) *Accommodation ladders and brow type gangways.* Wooden accommodation ladders and wooden brow type gangways shall be unshipped from present locations, together with all gear, including stanchions, platforms, davits, tackle, etc. and stowed in sheltered area under bridge two feet from the skin of the ship and six inches from the deck.

(e) *Booms and masts.* All booms shall be stripped without burning shackles or fittings, and all gear coiled, tagged and stowed in sheltered area under bridge. All booms shall be lowered into the cradles properly wedged to prevent them from resting on the metal of the cradle and properly wedged under the goosenecks to prevent them from freezing in sockets. Goosenecks are to be coated with preservative compound. All telescopic topmasts shall be lowered and housed. Signal and antenna masts where hinged shall be lowered to the deck and properly secured as directed.

(f) *Radio antenna.* Radio antenna and insulators shall be rigged down, carefully coiled, secured, and stowed in a sealed storeroom.

(g) *Mooring wires and rope hawsers.* A total of eight lengths of wire each with a six-foot eye, minimum ⅞" diameter, each 250 feet minimum length, shall be coiled and left on deck, four forward and four aft, ready for use at the reserve fleets for mooring. Wire spring lines, topping lifts and purchases may be used. Insurance wires also shall be ready fore and aft. All other wires shall be neatly coiled, tagged, and stowed in the sheltered area under bridge. Rope hawsers and all other manila rope shall be removed from the ship and disposed of as directed by Maritime Administration representative.

(h) *Anchor windlass.* On steam operated windlasses remove section of steam line in way of steam valve and secure same with wire adjacent to windlass. Install flange with 1½" pipe connection for air. Remove exhaust valve completely and secure same with wire adjacent to exhaust line. Blank off sections of steam and exhaust lines going aft. Electric anchor windlasses are to be left ready for service. Exposed moving parts subject to deterioration are to be coated with preservative.

(i) *Sanitary bowls, sinks and wash basins.* All sanitary traps, toilet bowls, sinks and wash basins shall be dried out and trap plugs removed and wired adjacent. All head and washroom doors shall be locked after inspection of the vessel prior to departure for the fleet.

(j) *Narcotics.* All narcotics, including paragoric and morphine syrettes from "Abandon Ship" kits shall be removed and disposed of in accordance with General Services Administration regulations, Section 1-IV-102.00, Disposal of Surplus Narcotics, "Regulation of GSA" Title I, Personal Property Management.

(k) *Subsistence stores.* All subsistence stores, including canned lifeboat rations and water, shall be removed from the ship and disposed of as directed by the local Maritime Administration representative.

(l) *Stripping.* All items constructed of wood, metal, glass, crockery and plastic shall remain aboard, with the exception of valuable equipment such as barometers, clinometers, clocks, binoculars, chronometers, sextants, tachometers, typewriters, adding machines, micrometers, firearms, silverware, etc. These valuable items shall be cleaned, repaired if necessary, properly tagged and packaged to assure against damage in handling, and returned to warehouse. The duty must be paid on all foreign-purchased instruments removed. The following items shall be removed, properly tagged, and disposed of as directed by local U.S. Maritime Administration representative:

(1) All slop chest items, medicines and surgical instruments.

(2) Remove lead-acid batteries only, and dispose of as directed by a Maritime Administration representative. Alkaline type batteries shall remain aboard and be prepared for storage as follows:

(i) Fill each cell with distilled water to the midpoint between top of plate and top of cell container.

(ii) Charge batteries to 1.75 volts per cell. When this voltage is reached continue charge for six hours.

(iii) Check specific gravity of each cell and ascertain that specific gravity is between 1.190 and 1.200. If not, correct to obtain reading within the aforementioned range. Electrolyte level, if low, should be restored to ⅜ inch above plates.

(iv) Ensure that battery trays are clean and dry.

(v) Disconnect batteries and tag battery leads.

(vi) Remove inter-connectors to interrupt any stray current circuits. Place connectors and bolts in envelope and store with batteries.

(vii) Cell tops are to be cleaned.

(viii) Check steel cases of cells to ensure they have complete coating of (*a*) Nicadvar bitumastic maintenance coating or (*b*) Gaco neoprene maintenance coating N-700-1.

(ix) Ensure all battery vent caps are closed.

(3) All entertainment radios, lifeboat radios, and lifeboat transmitters.

(4) All electric and pneumatic hand tools, A.C. fans, oxygen-breathing apparatus, fresh air hose mask, flame safety lamp, and other protective equipment.

(5) All cordage, scrap rope, net slings and rope ladders.

(6) All coal and forge coke.

(7) All inflammables, paints, greases and oil in containers, pyrotechnics such as lyle gunpowder bags, rockets, flares, primers, pilot signals, etc.

(8) All freon, oxygen, hydrogen, and acetylene gas cylinders, and all empty or partially empty drums and carboys shall be removed and returned to the suppliers for credit. All CO_2 cylinders shall remain aboard. Butterworth equipment, if rented, shall be returned to proprietor. If Butterworth equipment is owned by ship, it shall be cleaned, greased with rust preventive compound and stored on board as directed by local Maritime Administration representative.

(9) All deck, engine and steward's consumable stores, except pipe, pipe fittings and plumbing supplies, electrical fittings and supplies, fire brick, hardware, metals, hand tools and packing.

(10) Mattresses and pillows selected for return to warehouse are to be cleaned, renovated and sterilized. Sheets, pillowcases, towels, spreads, coats, curtains, and rugs shall be cleaned or laundered. All items to be packaged by type and properly tagged.

(11) Miscellaneous blocks and other deck equipment shall be neatly stowed on shelves in the bosun's storeroom. Blocks are to be separated from other equipment to allow preservation without further handling. All gear or equipment shall be removed from mast lockers. Loose equipment shall not be left laying about the decks but shall be neatly stowed in storerooms.

(12) All boiler water-testing equipment and material, including water conditioning compounds.

(13) All canvas, signal flags, bunting, canvas windsails, life jackets, life rings, etc.

(14) Name boards and all electrical navigation lights unless permanently installed, shall be removed from locations and properly stowed. All weather-exposed binnacles and sounding machines to be removed from present locations and stored in sealed storerooms.

(15) Cargo floodlights, searchlights, daytime blinker signal searchlights, debarkation lights, etc., unless permanently installed, are to be removed from present locations and stowed in sealed storerooms.

(16) All sheet metal constructed storage boxes, such as lyle gun box, boat fall boxes, etc., which are exposed to the weather shall be removed from their present locations and stowed in sheltered area under bridge.

(m) *Sealing up rooms.* All items remaining aboard of a pilferable, fragile or delicate nature, such as tools, galley gear, mess gear, and spare parts of small size shall be placed in a storeroom behind a solid metal door. The door shall then be closed and, if a hasp and keeper is not provided, such hasp and keeper shall be installed and door shall be sealed with a numbered metal car seal to the satisfaction of the Maritime Administration representative. Expanded metal lockers shall not be used for the stowage of pilferable material.

(n) *Books, log books, blueprints and navigation books.* Merchant Marine library books shall be removed by the Merchant Marine Library Association. All log books and bell books shall be listed in a covering letter and forwarded to the District Property and Supply Officer, Maritime Administration, 45 Broadway, New York, N.Y. 10004. Copies of the covering letter shall in each case be sent to the Chief, Division of Office Services, Office of Property and Supply, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and to the cognizant Coast Director who shall check each list to ensure completeness of submissions. Blueprints, instruction books, ship's plans and ship's correspondence shall be properly sorted and stored in metal cabinets located in chief engineer's or master's office. Navigation charts are to remain in chart desk.

(o) *Rented equipment.* Owners of all rented equipment shall be requested to remove all such equipment before the ship departs for the fleet.

(p) *Main radio installation.* Main radio installation—to be serviced and prepared for layup as follows:

(1) Open all switches.

(2) Remove all spare radio tubes, fuses and spare parts, etc., and pack, mark and stow in spare parts box in sealed storeroom.

(3) Inspect equipment for fungus, mold, dampness, verdigris or any other deterioration. Where such conditions exist the affected surfaces are to be carefully dried and cleaned to prevent further damage. All weather deck openings to the radio room shall be closed prior to the start of the deactivating work to prevent moisture from entering.

(q) *Bunker fuel oil.* With the exception of diesel oil which may remain aboard in any quantity, bunker fuel oil must not be on board in excess of 1,000 bbls. or less than 500 bbls. unless otherwise directed by local Maritime Administration representative, and duty must be paid on all oil of foreign origin if removed, but not if transferred to another ship. Whenever possible, remaining fuel oil shall be pumped back to the settling tanks.

(r) *Peloruses and gyro compass repeaters and compasses.* Peloruses and gyro compass repeaters shall be properly disconnected (not cut), tagged, and stored face down, compasses (magnetic and gyro repeaters) shall be removed from binnacles and also stowed upside down; the radar, loran, direction finder, fathometer, and master gyro tubes, fuses, spare parts, shall be collected, tagged, wrapped and stowed in a spare parts box, all of which shall be placed in sealed storeroom. The master gyro compass room, if suitable, may be used.

(s) *Garbage and trash.* All garbage and trash shall be removed and all interior and weather decks to be swept and left clean.

(t) *Keys and ship's documents.* All master keys, including head and washroom keys, shall be tagged and turned over to the fleet representative by the master upon arrival of the ship at the fleet. All other keys shall be tagged and locked in the master's safe. All the ship's documents and papers shall also be delivered by the master to the fleet representative, together with a list of these documents and papers in triplicate. The fleet superintendent will give the master a signed receipt for all papers and keys. The combination of the ship's safe shall be left among the ship's papers.

(u) *Securing the engine room and machinery components.* (1) The propulsion shaft or shafts on all ships shall be secured and locked by using a keeper plate on tailshaft coupling. Plate to be drilled for three coupling bolts and fitted to the coupling flange on topside using original coupling bolts. Keeper plate to be ¾" steel plate properly secured to steel frames by four 1-inch diameter fitted bolts, two on each side. Installation is to permit keeper plate to be removable. In no case shall a jacking gear be left engaged to act as a brake.

(2) Stern glands shall be tightened or repacked to prevent leakage.

(3) For ships going to fleets south of Astoria, Oregon and James River, Virginia, all sea valves are to be tightly closed and valve wheels securely wired to the valve body in a closed position to prevent accidental opening, except that, where blank flanges are installed against the skin valve, valve wheels need not be wired. Leaking sea valves below the light water line must be repaired or blanked off at the skin valve. In all cases where any piping or machinery is disconnected or opened, and the possibility exists that a leaky valve or the opening of a valve would permit access of sea water, all such valves below the light loadline are to be properly blanked off.

For ships going to fleets north of Suisun Bay, California and north of Wilmington, North Carolina, break flanges, furnish and install blank flanges, minimum ⅜" steel plate, in way of all sea valves below light loadline. A ¾" extra heavy nipple is to be fitted and welded in center of blank flanges, and fitted with a cap. These blank flanges are to be tested and proven tight. Extreme care is to be taken in draining the systems so that all piping, fittings, etc. are fully drained.

(4) Specifications and uniform cold weather draining instructions have been prepared for all ships entering Pacific Northwest fleets and fleets north of Hatteras on the East Coast, which will be supplied by local Maritime Administration representatives. Strict compliance is required.

(5) Engine room bilges: Tank tops in engine room, fire room and shaft alley shall be thoroughly cleaned, all debris removed, and bilges left dry. Bilge strainer plates shall be removed and stowed alongside of bilge well.

(6) Open all circuit breakers and switches on the main switchboard. Switches energizing circuits in bad condition shall be tagged accordingly.

(7) The rudder shall be secured in a midship position as directed, to prevent shifting under tow.

(v) *Servicing propulsion machinery for reciprocating, turbine and diesel engines.* (1) Reciprocating main engine cylinders and valve chests: The main engine cylinders and valves are to be drained free of all water and all exposed parts coated lightly with rust preventive compound.

(2) Main engine piston rod and valve stem packing: The metallic packing assembly on each piston rod and valve stem is to be dropped; all boxes, segments, rings and springs are to be cleaned of all carbon or other foreign matter. At completion of cleaning, all boxes, packing segment rings and springs are to be coated with rust preventive compound. The packing assembly parts of each rod and valve stem are to be bundled in heavy oiled paper, tagged and stored in a sealed storeroom. The piston rods and valve stems are to be cleaned and coated with rust preventive compound. The packing box securing studs and nuts are to be coated with rust preventive compound and all packing boxes replaced with securing nuts at half thread position. On ships going into cold weather fleets, the lower bull's eye on H. P., I. P. and L. P. cylinders are to be drained by lowering the cylinder neck bushing. Tags to be affixed stating that neck bushings are to be replaced as originally positioned upon reactivation of vessel.

(3) Line shaft bearings, guides and thrust: Water service lines are to be disconnected and drained. Connections to be released at lowest point to assure proper drainage.

(4) Main thrust: The main thrust bearing, when separately housed, shall be drained, cleaned and left dry.

(5) Generators (steam end): Cylinders to be drained through drain valves and valves left open. Piston rods and valve stems to be coated with rust preventive compound.

NOTE: Piston rod and valve stem packing not to be removed.

(6) Generators (electrical end): The commutator brush springs are to be released, the brushes removed and fastened firmly together and wired adjacent to, but clear of, rotating element.

(7) Auxiliary machinery: All steam cylinders and steam valve chests and water ends on all machinery throughout the ship are to be drained after the steam and exhaust lines leading thereto have been dealt with as re-

quired elsewhere in this directive. Special attention shall be paid to that portion of these lines between machinery and throttle valves or riser pipes in the immediate vicinity. It is not required that pump heads be raised or that cylinder heads and valve plates be removed or loosened to provide full drainage. Removal of plugs or drain valves during air blowing will suffice. Probe drainage opening with wire where no evidence of condensate can be seen. All exposed working parts are to be covered with rust preventive compound.

NOTE: Valve stem, piston rod and shaft sleeve packing need not be removed.

(8) Main boilers: The water side of all boilers shall be thoroughly flushed and cleaned of all loose scale, mud and other foreign material. This shall include economizers, superheaters and water walls. After cleaning, all parts shall be thoroughly drained. One manhole plate on steam drum and one handhole plate in each end of each boiler removed. Handhole plates are to be secured by wire to a stud adjacent to its respective location. Boiler casing doors shall be removed and stowed adjacent to respective boilers. Burners and tips shall be removed and stowed in engine room storeroom. Fire side of all boilers shall be thoroughly cleaned, including fire sides of generating tubes, air heaters, stack, uptakes and superheaters. All debris and foreign matter shall be removed ashore.

Under no circumstances shall water or steam be used in cleaning the fire side of any boiler, economizer, superheater or water wall. Boiler room area shall be swept and left in a clean, orderly condition.

(9) Main air pump and attached pump: The main air pump and attached ram pumps are to be drained of all water by slacking back on inspection plate openings and removal of drain plugs where necessary. At completion of draining all removals made for this purpose are to be left open and drain plugs wired adjacent to openings.

(10) Main condenser, auxiliary condenser, freon condenser and distiller: All condensers and distillers are to be drained on the steam, liquid and salt water side, except freon side of reefer condenser, by the removal of drain plugs or breaking of joints where drain plugs are non-existent. Whatever method of drainage is employed, all removals are to be replaced as before with no outlets from the condensers left open.

(11) Steam, exhaust and water lines: All steam, exhaust and water lines throughout the vessel, including tank heating coils are to be opened at the lowest points and extremities, by the removal of drain plugs, valve bonnets, or other suitable means, and blow out by compressed air all water or condensation from such lines. At completion of draining all removals made for this purpose are to be left open and drain plugs wired adjacent to openings.

Insulation blankets shall be removed from throttle and stop valves and flanged connections on boilers and large steam lines. Those found in good condition shall be tagged and stowed in a sealed storeroom.

(12) Evaporator: The evaporator is to be opened up, scaled, cleaned and drained. The cover studs and nuts are to be coated with rust preventive compound and the cover replaced slightly ajar to ensure circulation of air into the shell. All nuts are to be replaced hand tight on the studs.

(13) Feed water heater: The feed water heater is to be opened up, cleaned and drained. The cover studs and nuts are to be coated with rust preventive compound, cover replaced slightly ajar, and nuts placed on studs hand tight.

(14) Filter box and inspection tank: The filter box and inspection tank are to be drained and the drain plugs wired adjacent to openings.

(15) Steam traps and manifolds: All steam traps and manifolds are to be drained and the adjacent lines are also to be drained. At completion of draining, all removals made for the purpose are to be left open, and drain plugs wired adjacent to openings.

(16) Grease extractors: All grease extractors shall be cleaned and drained and loofa sponges and similar purpose material removed and disposed of off the ship.

(17) Steam, exhaust and liquid valves: All manifold and other valves throughout the vessel, including boiler valves and machinery operating valves, which do not affect seaworthiness, are to be left with the valve disc raised off the seat.

(18) Reducing valves: All reducing valves are to be drained and all removals made for this purpose are to be left open and drain plugs wired adjacent to openings.

(19) Main throttle valves: The main throttle valve is to be thoroughly drained and the drain plugs are to be left out and wired adjacent to valve.

(20) Freon refrigeration system: The freon refrigeration system shall be charged to full capacity of gas, after which the system is to be blanked off in such manner as to ensure that full charge is maintained. The condenser to be thoroughly drained.

(21) Tools: All tools of every description except those otherwise specified for removal are to be cleaned, coated with rust preventive compound, and placed in the storerooms. The doors leading to each storeroom are to be closed and sealed. Storerooms to be assigned by USMA Survivor.

(22) Main and all auxiliary turbine units: Thoroughly drain all main and all auxiliary turbine units and their connections of all water and moisture by the removal of drain plugs and drain valve bonnets, or breaking of joints. At conclusion of draining, all openings made for the purpose of draining are to be left open. Drain plugs to be wired adjacent to openings.

NOTE: Main and auxiliary turbine shafting and packing assemblies are to remain intact.

(23) Main and auxiliary turbines—lubricating oil systems and sumps: Transfer all lubricating oil from each sump tank, both main sump and all auxiliary sumps to a reserve tank, after which open up and thoroughly clean all sumps and close up as before. Drop sufficient clean lubricating oil to each sump tank, after which circulate clean oil through each respective lubricating oil system. While the lubricating oil is being circulated, each turbine unit, both main and auxiliary, is to be jacked over five (5) complete revolutions to ensure that clean oil has circulated through each bearing and gear of the respective units. At completion of jacking and oil circulating, the oil in the various sump tanks is to be pumped back to the reserve tanks and all sumps left empty.

(24) Turbine driven feed pump: Drain all liquid from the lubricating oil sump tank. Open up and thoroughly clean, after which close up as before. Flush all bearings with clean lubricating oil.

(25) Motors—deck winches, capstans and steering gear: The commutator brush springs are to be released and the carbon brushes removed, wired and stored in controller boxes adjacent to motors. Take insulation resistance readings of all generators and motors on vessel except those of fractional horsepower. The results of those readings shall be included in the condition survey. On exposed motors all defective inspection plate gaskets are to be renewed to ensure that each motor is watertight.

(26) Deck winch & capstan controller boxes and master switches: Remove the covers from each controller box and master switch box of each deck winch and capstan, dry out any moisture and close up in watertight condition. Any and all defective gaskets are to be renewed to ensure that each box is watertight.

(27) Diesel auxiliary generator: Thoroughly drain all liquids from the water jacket, heat exchangers, lubricating oil system and sump. Thoroughly clean the sump tank and close up as before. By use of hand pump, flush the entire lubricating oil system with clean lubricating oil and, during the flushing operation, jack the engine over five (5) revolutions to ensure that all bearings are well coated. At the conclusion of this operation, remove the oil from the sump and leave the system closed up and intact.

(28) Steam boilers (heating): Flush down the water sides with fresh water, after which thoroughly drain off all water. Remove one (1) manhole plate and one (1) handhole plate if such exists and secure the removed plates adjacent to their respective locations with wire. Thoroughly clean the fire sides including the uptakes and stack, and remove all debris ashore.

NOTE: Neither steam nor water shall be used for cleaning fire sides of boiler.

(29) Heat exchangers, oil coolers and distiller: All heat exchangers, including lube oil coolers and the distiller, with the exception of the fuel oil heaters, are to be drained on the steam, liquid and salt water sides by the removal of drain plugs or breaking of joints where plugs are nonexistent. At the completion of draining, all removals made for this purpose are to be left open, plainly marked, and drain plugs wired adjacent to openings.

(30) Diesel main engine and generators: Remove all oil from the crank cases and sumps of main engine and generators by pumping such oil into the settling tank. Thoroughly clean the sump tanks and all crank cases, and close up as before. Fill each sump tank with sufficient clean lubricating oil to circulate the lubricating systems of each engine. Circulate the clean lubricating oil through each system under pressure and, while the oil is being circulated, each engine is to be jacked over five (5) complete revolutions. At the conclusion of this operation the clean oil left in the sump tanks is to be pumped back to the reserve tanks. The daily service fuel oil tank is to be pumped out dry, tank thoroughly cleaned, and closed up as before. The water jackets of main engine and for auxiliaries are to be thoroughly drained and all openings made for draining are to remain open. Open up and clean the exhaust manifolds and exhaust stack including silencer, which also shall remain open. Remove all debris ashore.

(31) Lubricating oil and fuel oil centrifuges: Open up and thoroughly clean the centrifuges of the lubricating oil and fuel oil systems, sediment drain tanks to be opened, thoroughly cleaned, and left open upon completion.

(w) *Steering engine gears and steering engine room.* All rods and gears of the steering engine are to be coated with rust preventive compound and steering engine room is to be broom-cleaned and left in an orderly condition. Any and all resultant debris to be removed ashore.

(x) *Inventory.* Inventory shall be effected in accordance with instructions issued by the local Maritime Administration office.

(y) *Certificates of inspection, registry, enrollment, and radio license.* Ship's Certificate of Inspection shall be turned in to the United States Coast Guard, and the Ship's Radio License shall be sent to the Federal Communications Commission, Washington, DC 20590. The general agent shall deposit the Certificate of Registry or enrollment in the office of Collector of Customs of the District in the area where the ship is to be laid up, and noted on the Certificate of Redelivery, Form No. MA2-104, the place and date of deposit of either or both certificates if used.

(z) *Property transfer notice.* Material removed to another Maritime Administration activity shall be covered by Property Transfer Notice, in accordance with Management Order No. 538. Property Transfer Notices must accompany all material to a U.S. Maritime Administration warehouse. All other material removed for disposition must be covered by listing, as directed by local Maritime Administration office.

(aa) *Drydocking.* Drydocking will be required when records indicate underwater repairs are necessary, or that period since last drydocking was greater than six (6) months. When drydocking is required the following items of work shall be accomplished:

(1) Anchor chains: While vessel is on drydock, range both chains and wash off clean; drain and clean chain locker and hand pump system. Chain and chain locker to be coated with metal conditioning compound, and at completion restow chains in lockers.

(2) Peak tanks, void tanks and double bottom fresh water tanks: While vessel is on drydock remove bleeder plugs and flush out to remove mud and muck. Upon completion replace plugs as before.

(3) Stern gland: The stern gland is to be completely repacked with approved packing.

(4) Hull cleaning and painting: Sandblast to bare metal a 4-foot band all around from 2 feet above to 2 feet below flotation line. Apply one coat of vinyl wash primer and two coats of anti-corrosive paint to bare surfaces.

(bb) *Condition surveys.* A condition survey shall be prepared reflecting the condition of all parts of the vessel, its equipment and appurtenances, such survey to be effected jointly by representatives of the Division of Ship Repair and Maintenance, the Division of Operations, and the general agent. In preparing condition survey, items requiring corrective action contained in repair lists, American Bureau of Shipping reports, notes of protest, or U.S. Coast Guard citations, are to be included and specifically referred to. Wherever possible, estimated costs for corrective repairs are to be shown. There should also be included in survey report special structural information involving type, volume and location of ballast, booms, gyro compasses, radar, and other specific installations that would provide valuable information in determining condition of vessel for withdrawal preference. Copies of condition survey are to be distributed in accordance with existing procedures, similar to redelivery surveys effected on vessels from BBC operation. When condition surveys disclose safety hazards such as defective ladders, handrails, etc., or where items of work are required to prevent deterioration in reserve fleet, they shall be repaired prior to sending the ship to the fleet.

(cc) *Ballast.* Liquid ballast not essential for stability purposes shall be removed unless otherwise directed.

(dd) *Electrical receptacles.* All weather-exposed electrical receptacles are to be closed to prevent leakage. Missing caps and vapor globes are to be replaced on weather decks.

(ee) *Fore peak tank, after peak tank, #1 and #2 deep tanks—port and starboard—and void tanks.* These tanks are to be opened, drained and all covers are to be replaced watertight.

(ff) *Fresh water double bottom tanks.* Prior to delivery to fleet, the fresh water double bottom tanks are to be pressed up with fresh water.

(gg) *Domestic fresh water tanks and service water tanks.* Domestic tanks and all hot and cold water service tanks throughout the vessel are to be drained by removing drain plugs, removing valve bonnets, or breaking joints. At completion of draining, all removed or disturbed parts are to be left open and plainly marked. Drain plugs shall be wired adjacent to openings.

(hh) *Cleanliness of quarters.* Drawers and lockers shall be thoroughly cleaned and no equipment shall be left in quarters unless otherwise specified in these instructions. Rooms shall be stripped of all linen, wearing apparel or other articles. Rooms shall be swept clean and doors left unlocked. All staterooms, galleys, messrooms, refrigerated spaces, shall be stripped and cleaned. Portholes shall be dogged and chartroom windows securely closed. Food: Food shall not be left in refrigerators, messrooms, or storerooms, and those spaces shall be thoroughly cleaned. Reefer spaces shall be thoroughly cleaned and the gratings stowed on end and the doors secured in an open position. No food shall be left on board by riding crews. Galley stoves shall be disconnected and moved out approximately 2 feet from bulkhead in order to expose all areas for preservation. Canopies, fans and air ducts above the galley range shall be thoroughly cleaned of all grease, ash, carbon, etc., and made ready for preservation. Burner furnace and range to be cleaned. Galley stack to be cropped approximately 4 feet above deck and trunk plugged with wood and canvas covered. Stack shall be stowed in sheltered area midships.

(ii) *CO_2 controls.* Master CO_2 controls shall be disconnected, all CO_2 bottle stop valves tightly closed, and CO_2 rooms shall be locked. These requirements must be strictly observed.

(jj) *Fire fighting equipment.* All portable fire extinguishers shall be removed except CO_2 extinguishers, which shall be left in place aboard ship. All fire fighting hoses shall be removed from vessel and disposed of as directed. The semi-portable foamite fire extinguishers in engine room shall be emptied, cleaned, and loosely re-assembled.

(kk) *Riding crews.* (1) Unvented oil stoves for heating quarters shall not be furnished riding crews for ships under tow.

(2) The riding master shall at all times maintain full control over the riding crew. Upon the arrival of the

ship at the reserve fleet, fleet officers will inspect the ship along with the riding master to determine that satisfactory conditions exist relative to sanitation, security and safety.

(3) The riding master shall receive from the fleet representative a receipt upon delivery of the keys and ship documents after the joint inspection. A sample format is set forth below as Exhibit "A."

EXHIBIT A

U.S. DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

NATIONAL SHIPPING AUTHORITY

Ship Condition Receipt

Date————————

To: ———, General Agent of the
SS ———.

This will certify That the subject ship arrived at ——— (Time) ——— (Date) at the ——— Fleet and was found to conform with the acceptance requirements, except as noted below.

1. Stability and watertight integrity
2. Cleanliness and sanitation
3. Storerooms
4. Inventory of ship's documents
5. Keys
6. Remarks:

————————————
Fleet Superintendent

cc: Local Maritime Administration office where ship prepared for layup, Coast Director

(ll) *Limiting drafts.* It shall be the responsibility of the agent delivering the ship to reduce the draft to the minimum practical for the type. In any case, the draft shall not be in excess of the draft limit allowable for the fleet site to which the ship has been ordered. The draft limits for the various reserve fleet sites are as follows:

	Feet
Hudson River	25
James River	24
Wilmington, N.C	16
Mobile, Ala	15½
Beaumont, Tex	16
Suisun Bay, Calif	18
Astoria, Oreg	24
Olympia, Wash	25

The foregoing are maximum drafts and not mean drafts. If a ship's draft when ready for delivery to a fleet site exceeds the maximum draft listed for that site, the master shall immediately contact the local Maritime Administration office for further instructions.

(mm) *Greases and preservatives.* Where this order requires preservatives to be used, they shall comply with the following specifications:

Compound, Rust Preventive, Type B, Medium Grade, USMC Specification No. 52-MC-602A.

Compound, Metal Conditioning, Spec. No. MIL-M-15205a.

(nn) *Navigational equipment for towing.* In order that the vessels will comply with all regulatory requirements of the U.S. Coast Guard and rules of the road while being towed to a reserve fleet, the following items of equipment are required to be on board. They have been assembled in the form of a "kit" which is available from the local Martime Administration office.

1 Red Side Light (Kerosene).
1 Green Side Light (Kerosene).
1 Fixed Stern Light (Kerosene).
2 Anchor Lights (Kerosene) 360°/3 mi. White Light.
2 "Not Under Command" Lights, Red (Kerosene) with 6-foot tack line on each.
3 Black Balls (2-feet diameter) with 6-foot tack line on each.
1 Ea. International Code Flags M&C.
1 Signal Pistol with 12 Red Parachute Flares in Watertight Container.
1 Hand-Operated Fog Horn.
1 Ship's Bell Forward.
1 Fog Gong Aft.
1 Pilot Ladder, 40 feet (chain and aluminum construction).
1 Supply of Kerosene in Can.
1 Life Jacket per member of riding crew, plus twenty-five percent spares.

In addition, the following halyards shall be left in place:

Bridge—For "Not Under Command" Lights, Ship's and International Code Flags.

Forward—For Anchor Ball and Light, not less than 20-feet above the deck.

Aft—For Anchor Light, nor less than 15-feet lower than forward anchor light or other accessible device for suspending the light.

Upon delivery of the vessel to the reserve fleet this equipment is to be turned over to the Fleet Superintendent for his disposal.

(oo) *Tags.* Whenever tagging is mentioned throughout this order, tags supplied shall be of non-ferrous metal or plastic, impervious to oil, water and weather.

[OPR-6, Rev., 24 FR 1208, Feb. 17, 1959, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1 1980]

Sec. 4. General provisions.

(a) The General Agent's Completion Report shall be filled out and signed by a responsible member of the general agent's operating department, preferably the master of the ship, and given to the fleet representative of the fleet to which the ship is delivered. A copy of this report shall be forwarded to the local Maritime Administration office, where the ship was prepared for layup. A sample format is set forth below as Exhibit "B".

EXHIBIT B

U.S. DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

NATIONAL SHIPPING AUTHORITY

General Agent's Completion Report

Date ——————

SS or MS ——————

General Agent——————

Prepared for layup at ——————

Delivered to Reserve Fleet at ——————

Date of delivery ——————

The above ship was prepared for layup in full accordance with USMA, NSA Order No. —— (OPR——)

Signed ——————

Title ——————

(b) A "Cost of Preparation for Layup Report" shall be filled out in triplicate and two copies forwarded to the National Shipping Authority, Chief, Division of Operations, Washington, DC 20590, and one copy forwarded to the respective Coast Director, as soon as possible after delivery of the ship to the fleet site. A sample format is set forth below as Exhibit "C".

EXHIBIT C

U.S. DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

NATIONAL SHIPPING AUTHORITY

Cost of Preparing for Layup and Stripping

Name of ship .... Operator ....
Date ordered to prepare for layup.................... Port ....
Date commenced preparations for layup .... Finished....................
Date departed for RF .... Date entered RF ....
Was preparation done by contractor or crew? ....
Name of contractor....................
Expenses incurred from time delivered under GAA for layup to time delivered to RF:

Ship Expenses (Itemize) and Cost of Other Preparation Work—Stripping, Trucking, Etc. (Itemize)

Wages of crew (exclusive of riding crew)....................
Subsistence....................
Lodgings ....
Consumable stores ....
Fuel consumed....................
Wharfage ....
Pilotage....................
Night watchman (guards) ....
GAA fees....................
Other misc. expenses....................
Duty on foreign-purchased equipment ....

Cost of harbor tugs—Shifting ship (itemize) ....

Cost of local towage to fleet ....

Cost of deep sea towage ....

Handling lines ....

Riding crew expenses:

Wages ....

Subsistence ....

Transportation ....

Total ....

Summary of Expenses

Ship expenses ....

Contractor's costs for preparing vessel for layup ....

Cost incidental to cleaning ship, packaging and removal of ship material ....

Cost of tugs ....

Handling lines ....

Riding crew expenses ....

Grand total ....

NOTE: Name of *Ship* and *Operator* must appear on each sheet.

(c) Detailed instructions will be issued by the local Maritime Administration representative wherever mentioned in the foregoing.

(d) Copies of all layup specifications are to be made available to the Maritime Administration office for screening and approval before submitting to contractors. Before awards are made, the local office representative must review and approve the award. General Agents will make the award designated by the local office. Copies of all bid tenders to be made available to the local office.

(e) An authorized Certificate of Redelivery furnished by the NSA shall be processed and filled out by the respective Coast Director and forwarded to the General Agent for execution and return. Five copies of the executed certificate shall be forwarded by the Coast Director to the National Shipping Authority, Chief, Division of Operations, Washington, DC 20590.

The disposition of the ship's marine documents (Certificate of Registry or Enrollment or Temporary Enrollment if used) shall be stated on the Certificate of Redelivery showing place and date of deposit.

[OPR-6, Rev., 24 FR 1208, Feb. 17, 1959, as amended at 33 FR 5852, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

PART 334—RADAR OBSERVER CERTIFICATES, SHIPS' SAFETY AND USE OF RADAR

Sec.

1. Purpose.
2. Radar observer competency.
3. Safety of navigation.
4. Use and maintenance of radar.

AUTHORITY: 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: 25 FR 2104, Mar. 12, 1960. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. Purpose.

The purpose of this regulation is to state the policy of the National Shipping Authority of the Maritime Administration regarding the competency of deck officers, safe operating practices, and the proper and effective use of radar on any Maritime Administration vessel operating for its account under a general agency agreement.

Sec. 2. Radar observer competency.

(a) Effective as of this date each master and deck officer employed on board GAA vessels equipped with marine radar shall be in possession of a certificate indicating satisfactory completion of a Radar Observer Course approved and recognized by the United States Coast Guard; or possess a master's or deck officer's license which has been issued as an original license or a raise in grade subsequent to January 1, 1959, in conformance with CGFR58-18, 23 FR 3447-10.05-46.

(b) Compliance with this regulation may be waived by the Maritime Administration Coast Director having jurisdiction over the vessel upon evidence by the General Agent that such qualified personnel are not available for the dispatch of the vessel and the sailing would be prevented or delayed; or for other reasons, by the Director, National Shipping Authority of the Maritime Administration.

Sec. 3. Safety of navigation.

Radar does not relieve the master of a vessel of the obligation to comply fully with the Rules of the Road and all practices of good seamanship. Safety of the vessel is paramount to schedules which are considered only as desirable objectives. Radar is an aid to safe navigation, and is only of value when properly and effectively used. Proper use includes careful plotting of ships, to predict or control the distance between two vessels at closest point of approach. Timely plotting is essential. Luminous plotting devices are authorized equipment on all radar-equipped GAA vessels and shall be utilized to the fullest extent possible.

Sec. 4. Use and maintenance of radar.

(a) To be of value and dependable, the radar must be used and maintained properly. Manufacturer's recommendations for operation and maintenance of the set should be complied with at all times. The radar set shall be energized in sufficient time to ensure its proper functioning.

(b) It is good practice to operate the radar set from sunset to sunrise when under way, and plotting should be practiced at every opportunity; thus, proficiency can be maintained. The master shall be responsible for the training of all watch officers, making certain that they practice their observations, computations and plotting during times of clear weather, that they check themselves by visual observations, thereby ensuring their proficiency while operating under conditions of reduced visibility.

PART 335—AUTHORITY AND RESPONSIBILITY OF GENERAL AGENTS TO UNDERTAKE EMERGENCY REPAIRS IN FOREIGN PORTS

Sec.
1. What this order does.
2. General Agents' authority.
3. General Agents' responsibilities.
4. General provisions.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: SRM-2, 16 FR 5321, June 6, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order outlines General Agents' responsibilities and limited authority in connection with repairs in foreign ports to vessels operated for the account of the National Shipping Authority under General Agency Agreement.

Sec. 2. General Agents' authority.

The General Agents are hereby delegated authority to undertake for the account of the National Shipping Authority only such emergency repairs outside the Continental United States as may be necessary to enable vessels to complete their voyages, provided the repair costs are not in excess of $5,000 per vessel.

Sec. 3. General Agents' responsibilities.

In the event the cost of emergency repairs to a vessel in a foreign port is estimated to exceed $5,000, requests for approval shall be transmitted by General Agents by cable or wire addressed to Chief, Division of Ship Repair and Maintenance, National Shipping Authority, Washington, DC 20590, and shall include the following information:

(a) The cost and time to effect permanent repairs on a straight time and overtime basis;

(b) The cost and time to effect such temporary repairs on a straight time and overtime basis as will enable the vessel to return to the United States under its own power or under tow;

(c) Whether required repairs can be effected by the use of facilities under the direct control of the Army, Navy, or other agencies of the United States Government, and if so, at what cost and time; and

(d) Where major repairs are involved, a recommendation regarding the advisability of repairing the vessel or abandoning it.

[SRM-2, 16 FR 5321, June 6, 1951, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 4. General provisions.

The General Agents shall keep the Division of Ship Repair and Maintenance in Washington fully posted in detail as to the nature, extent, cost, and estimated time for completion of all foreign repairs where such repairs are for the account of the National Shipping Authority.

As soon as practicable after completion of either temporary or permanent repairs, the General Agent shall forward to the Division of Ship Repair and Maintenance, Washington, D.C. the following:

(a) A copy of the repair specifications;

(b) An itemized statement of the costs of the repairs supported by copies of invoices;

(c) A copy of the completion certificate showing the repair period, signature of a National Shipping Authority representative (if available), the Agent's technical representative, the Chief Engineer, and the Master of the vessel;

(d) A report indicating the causes and circumstances leading to the repairs.

General Agents shall forthwith instruct their subagents and other representatives in foreign areas and their Masters and Chief Engineers with respect to their operations, pursuant to this directive.

This directive is intended strictly to limit repairs in foreign waters on vessels under National Shipping Authority control to those absolutely necessary to enable the vessels to complete their respective voyages at a port in the United States.

This directive shall not be construed to affect outstanding directives of the Office of the Comptroller.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[16 FR 5321, June 6, 1951, as amended at 21 FR 8105, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 336—AUTHORITY AND RESPONSIBILITY OF GENERAL AGENTS TO UNDERTAKE IN CONTINENTAL UNITED STATES PORTS VOYAGE REPAIRS AND SERVICE EQUIPMENT OF VESSELS OPERATED FOR THE ACCOUNT OF THE NATIONAL SHIPPING AUTHORITY UNDER GENERAL AGENCY AGREEMENT

Sec.
1. What this order does.
2. General Agents' authority.
3. General provisions.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

Section 1. What this order does.

This order outlines General Agents' limited authority to arrange for and award contracts for voyage repairs and servicing equipment of vessels operated for the account of the National Shipping Authority under General Agency Agreement.

[SRM-3, Rev., 18 FR 5035, Aug. 22, 1953. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. General Agents' authority.

The General Agents are:

(a) Hereby delegated authority to arrange for and award contracts for voyage repairs on vessels operated under the General Agency Agreement for the account of the National Shipping Authority when the aggregate cost of all such repairs in any one Continental United States port is not in excess of $25,000.

(b) Also delegated authority to arrange for and order the performance of minor repairs to or servicing of pantry and galley equipment, radios, gyro compasses, fathometers, radio direction finders, fire extinguisher systems, ships clocks, binoculars, barometers, typewriters, adding machines, and any other vessel equipment of a similar nature where the aggregate amount does not exceed $2,500 in any one continental United States port.

[SRM-3, Rev., 18 FR 5035, Aug. 22, 1953, as amended by Amdt. 2, 31 FR 16713, Dec. 30, 1966. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 3. General provisions.

(a) The voyage repairs, as covered by section 2(a), may be awarded by the General Agents within the limitation specified under the Master Repair Contract if the contractor is a holder thereof or if the contractor does not hold a Master Repair Contract under NSA-WORKSMALREP if the contract price does not exceed $2,000 and said contract is made in accordance with NSA Order 46 (SRM-5, Revised) and NSA Order 51 (SRM-6, Revised).

(b) The repairs to or servicing of ships equipment, as covered by section 2(b), may be awarded by the General Agents, within the limitation specified, by letter or purchase order.

(c) It is to be understood by all General Agents that the authority delegated by this order is not to be construed to cover alterations, additions, changes or betterments.

(d) The prime General Agents shall submit, in duplicate, to the Atlantic, Gulf or Pacific Coast Director, Maritime Administration, within whose District the Agents home offices are situated a monthly listing of all awards made by the General Agents and their Sub-Agents. This listing shall reflect individually the contractor, complete contract number, vessel, type of award, e.g., negotiated or bid, cost and repair period. This listing is to be submitted substantially in the following form:

Contractor	Contract No.	Vessel	Award	Amount	Start	Completed
Steamboat Repairs, Inc	MA-600-USL-1 ...	John Doe	Bid	$8,000	Jan. 1, 1953	Jan. 9, 1953
Steamboat Repairs, Inc	MA-600-USL-1A.	John Doe	Negotiated	1,000	....	Jan. 10, 1953

A copy of the monthly listing shall be forwarded by each prime General Agent to each Coast Director of the District in which any of the work involved was awarded. If no work was awarded by a General Agent under his delegated authority, a report to that effect shall be submitted to the pertinent Coast Director as prescribed in this section. The required reports shall be submitted to the Coast Directors within five (5) days after the last day of the month being reported upon. This reporting requirement has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[SRM-3, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 21 FR 8106, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 337—GENERAL AGENT'S RESPONSIBILITY IN CONNECTION WITH FOREIGN REPAIR CUSTOM'S ENTRIES

Sec.
1. What this order does.
2. Submission of repair entries.
3. Application for remission of duties.
4. Evidence required.
5. General Agent's authority to effect payment of duties.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: 16 FR 9658, Sept. 21, 1951. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order outlines the procedure to be followed by General Agents in filing foreign repair entries and obtaining relief from Custom's duties on equipment purchased for or repairs made to ships owned by or Bareboat Chartered to the U.S. Maritime Administration and operated under General Agency Agreement.

Sec. 2. Submission of repair entries.

At the first United States port of arrival upon termination of a foreign voyage, the ship's Master must file with the District Director of Customs as defined in 19 CFR 1.1(d) an affidavit on Custom's Form 3417 certifying that no equipment was purchased for or repairs made to the ship at a foreign port or if this is not the case, an affidavit on Custom's Form 3415 describing the equipment purchased and/or repairs made. If equipment was purchased and/or repairs were made in a foreign port, the Master simultaneously with or shortly after filing of Custom's Form 3415, must file a repair entry on Custom's Form 7535 together with invoices and required supporting documents.

[16 FR 9658, Sept. 21, 1951, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 3. Application for remission of duties.

An application for relief from the payment of duties imposed is to be filed with the District Director of Customs as defined in 19 CFR 1.1(d) if the following circumstances prevail:

(a) When an item covered by the entry is not within the class of items liable to duty (i.e., that the item does not constitute equipment, repair parts or materials within the meaning of section 466 of the Tariff Act of 1930);

(b) When the purchase of the equipment, repair parts or materials or the making of the repairs was necessitated by stress of weather and/or other casualty encountered during the regular course of the particular voyage and was necessary to secure the safety and seaworthiness of the vessel; or

(c) When the equipment, repair parts or materials were manufactured or produced in the United States and the labor involved was performed by residents of the United States or by members of the regular crew of the vessel.

To insure consideration in the liquidation (i.e., the assessment of duty) of the entry, the application for relief must be filed within 90 days from the date of the entry, except in meritorious cases, the District Director may grant an extension of 90 more days upon written request therefor.

[16 FR 9658, Sept. 21, 1961, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 4. Evidence required.

When relief is claimed on the grounds of stress of weather or other casualty, there must be submitted to the Collector the following:

(a) An affidavit of the Master which shall set out fully the nature of the casualty and/or stress of weather encountered; when and where the casualty and/or stress of weather occurred; nature of the damage sustained; the port where the repairs were made or the equipment purchased and a statement of the Master as to whether the repairs or equipment purchased were required to secure the safety or seaworthiness of the vessel to enable her to reach a port of destination in the United States;

(b) Itemized invoices covering the cost of repairs made or equipment purchased;

(c) Abstracts of the vessel's log;

(d) Classification surveyor's report confirming vessel's classification when the repairs were made in order to insure seaworthiness.

The Master shall certify as true copies or originals, as the case may be, one copy of each repair bill, abstract of vessel's log, survey report and other documents used in support of the application for relief. If a document is written in a foreign language, it should be accompanied by a translation certified to be accurate.

Sec. 5. General Agent's authority to effect payment of duties.

(a) In those cases where the conditions outlined in section 3 of SRM-4 do not prevail, the General Agent shall effect payment of duties imposed by Customs and shall include the expenditure in the voyage accounts of the vessel. In those cases where the conditions as outlined in section 3 of SRM-4 do prevail, the General Agent shall exhaust every means toward obtaining remission of duty imposed.

(b) Should the General Agent fail to obtain remission of duties in such cases, he shall refer the matter to the appropriate Coast Director for his (The Director) determination as to whether further appeal to the Bureau of Customs is warranted or that payment of duty should be made by the General Agent.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[SRM-4, 16 FR 9658, Sept. 21, 1951, as amended by Amdt. 1, 18 FR 5035, Aug. 22, 1953; 21 FR 8106, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 338—PROCEDURE FOR ACCOMPLISHMENT OF VESSEL REPAIRS UNDER NATIONAL SHIPPING AUTHORITY MASTER LUMP SUM REPAIR CONTRACT—NSA-LUMPSUMREP

Sec.
1. What this order does.
2. Use of contract for competitive bid and negotiated price awards.
3. Specifications.
4. Procedure for securing competitive bids.
5. Procedure for negotiated price awards.
6. Awarding of work.
7. Job order numbering.
8. Extra work and changes.
9. Payment.
10. Bonds.
11. Guarantee obligations.
12. Disposition of removed equipment and scrap.
13. Insurance.
14. Anti-Kickback and Davis-Bacon Acts.
15. Subcontracts.
16. Liquidated damages.
17. Performance of work resulting from damage sustained while undergoing repairs.
18. Group classification.
19. Ship Repair Summaries.
Sec.
20. Reports of awards.
21. Delegations of authority.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply R.S. 3709, as amended; 41 U.S.C. 5.

SOURCE: SRM-5, Revised, 18 FR 5035, Aug. 22, 1953. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order cancels NSA Order No. 32 (SRM-1); and outlines the procedure to be followed by the several Coast Directors, their field Ship Repair and Maintenance Staffs, the General Agents of the Authority, and the ship repair contractors in the award and performance of vessel repairs under the National Shipping Authority Master Repair Contract, NSA-LUMPSUMREP. The Coast Directors, field Ship Repair and Maintenance Staffs and the General Agents shall be referred to hereafter in this order as representatives of the Authority.

Sec. 2. Use of contract for competitive bid and negotiated price awards.

(a) The NSA-LUMPSUMREP Contract is a Master form of fixed price contract and is applicable to ship repair work awarded as a result of competitive bidding or negotiation. As a general rule all work awarded under the NSA-LUMPSUMREP Contract must be awarded upon the basis of competitive bids. Revised Statute section 3709 (41 U.S.C. 5), which requires the award of contracts on the basis of competitive bids, however, permits award upon a negotiated basis in certain situations, that is, "where immediate delivery or performance is required by the public exigency."

(b) There are set forth in paragraphs (b)(1) to (3) of this section three (3) examples of situations where the negotiation of fixed price awards for the accomplishment of work under the NSA-LUMPSUMREP Contract will be permitted in lieu of competitive bidding:

(1) *Where the desired results from competitive bidding cannot be obtained.* For example, where there is doubt as to the reality of competition or the fairness or reasonableness of a

low bid, all bids shall be rejected. If the ship's availability permits a new Invitation for Bids for the work in question shall be issued. If the bids received as a result of the second invitation are not considered satisfactory the bids are to be again rejected and prices of all specification items are to be negotiated with and the job awarded to the lowest bidder. If the low bidder refuses to accept the award upon the condition referred to the offer of award subject to price negotiation may be made to the next lowest bidder, etc. Negotiated awards in such cases shall be made in accordance with the conditions set forth on the invitation form, e.g., time specified, liquidated damages, etc. If a satisfactory price cannot be secured by negotiation with the bidders as herein proved an award may be made upon a negotiated basis approved in section 5 of this order.

(2) *Where the element of time is paramount.* There will be instances where expeditious ship turnarounds will necessitate the award of work without the delay involved in awarding on the basis of competitive bids. In such cases immediate negotiation for a fixed price with one contractor will be permissible. However, full consideration must be given to the factors involved in order to determine whether, under the circumstances, the time requirements make necessary the negotiation of price rather than using the competitive bid procedure. Such relevant factors are the individual ship's commitments with respect to loading berths, sailing dates, and the charter hire, etc., that might accrue in the event additional ship lay-time is required because of competitive bidding. Definite dollar and time values cannot be established as specific guides for determining when to negotiate. The individual ship and circumstances involved are the governing elements. The practice of consistently favoring one contractor where this type of repair is required will not be permitted but instead, to the maximum extent possible, all qualified contractors in the particular port shall be given the opportunity to perform work for the National Shipping Authority.

(3) *Extra items of work found subsequent to the awarding of the work covered by the original specifications.* Where extra items of work are required after the commencement of the awarded work, it is permissible to negotiate with the contractor who is performing the awarded work, for the accomplishment of such extra work under the provisions of Article 6 of the NSA-LUMPSUMREP Contract. A discussion of this procedure is set out in section 8 of this order. However, where items of extra work are found after examinations have been made as called for by the original specifications, negotiation with the contractor to perform such items of extra work shall be permitted only if the aggregate estimated cost of such items of extra work would not amount to a substantial part of the entire job. If the items of extra work amount to a substantial part of the entire job, they shall be awarded in the same manner and after consideration of the same factors as are set forth above for awarding original work.

Sec. 3. Specifications.

(a) It shall be incumbent upon the representatives of the Authority on each and every vessel requiring repairs for the account of the National Shipping Authority to prepare complete, detailed and fully descriptive specifications of the particulars of each repair item, identified in each particular case by the appropriate voyage number. Decisions of the Coast Directors' Ship Repair and Maintenance Staffs with respect to the need for any particular item in repair specifications shall be final. The specifications for voyage repairs shall itemize the work involved and shall be numbered consecutively and shall be arranged in accordance with the group classification set forth in section 18 of this order with the segregation by the three departments, namely, deck, engine and steward.

(b) The specifications shall in their final written form be explicit in every respect and shall include drydocking, if required, as well as all other items of work known to be required or discernible through visual inspection and examination regardless of the fact that later decision may be made to eliminate or defer some of the items of work. In no case shall an item of work, the accomplishment of which is problematical, be so identified or segregated in the specifications. Resorting to such general phraseology as "overhaul as necessary," "open up for examination and repair or renew as necessary," "repair or renew," etc., shall not be permitted in preparing and writing the specifications.

(c) Where an exact and final determination of the extent of the work cannot be ascertained until an examination has been made, the particular items involved shall so specify and the specifications with respect to said items shall be limited to such examinations as are necessary.

(d) If it is desired by the representatives of the Authority to change any item in the specifications after the specifications have been issued to bid such changes shall be reduced to writing and shall be distributed to the invited bidders at least by such time prior to the time originally specified for the opening of bids as shall reasonably permit the bidders to revise their estimates. If determined to be necessary or desirable under the circumstances, the representative of the Authority may extend the time for opening of bids.

(e) Any exceptions taken to the specifications by a prospective bidder shall be made known to the represent- ative of the Authority prior to the time specified for opening the bids. If it is finally determined by the representative of the Authority that the exceptions are justified, then the procedure set forth in the preceding sub-paragraph shall be followed. Exceptions accompanying bids not processed as herein prescribed, but made known at the time the bids are opened will not be acceptable, and will be a cause for rejecting such bids.

(f) When it is anticipated that the cost of a job will be in excess of a Coast Director's delegated authority, one (1) copy of specifications, and in case of bids a copy of Invitation for Bids, Instructions to Bidders and listing of contractors invited to bid shall be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, D.C., simultaneously with the specifications being issued to the co tractors.

(g) In all cases where materia parts or equipment are required connection with the performance any particular repair item the repr sentatives of the Authority shall ut lize to the fullest possible exter spares and replacement parts stocke in Maritime Administration warehouses. Prior to arranging for the purchase or furnishing of repair parts by repair contractors, it shall be the responsibility of the representatives of the Authority awarding work to determine that the required parts are not available in the Maritime Administration warehouse in the area involved, contingent upon the urgency of the particular situation, ship's sailing schedule, etc.

Sec. 4. Procedure for securing competitive bids.

(a) The geographical area within which bids will be invited involves the exercise of sound administrative judgment. All the relevant factors should be considered in deciding over what areas competitive bids should be invited. Such factors will include the scope and nature of the work, the location of the vessel, and the time and expense involved in shifting and returning the vessel to its loading berth consistent with the operating requirements.

(b) Invitations for Bids shall be sent to all contractors, within the area as determined in paragraph (a) of this section, who are considered to be financially qualified and to be capable of performing all of the work set forth in the specifications either by the utilization of their own or subcontractors' facilities. In this regard attention is invited to section 15 of this order.

(c) When inviting Bids the NSA form entitled "Invitation for Bids, Instruction for Bidders, and Specifications for Repairs, Renewals, Alterations and Additions to the Vessel ——————" shall be used.

(d) Attention is called to the fact that the Invitation for Bids form includes a statement of the completion date for the work. In the event bids are invited the individual vessel's period of availability and the extent of the proposed work shall be considered in fixing a completion date that is consistent with the scope of the work involved. Consideration must be given to the fact that it will not be possible in every case to get lower bids by extending a completion date beyond the normal time required to do the work merely because the vessel's availability is exceptionally long. At the same time, care is to be exercised to insure that the repair period is not shortened, when there is no urgent need for the use of the vessel, to such an extent that it is impossible for the contractor to accomplish the work under normal working conditions. A completion date can only be fixed so as to be financially and otherwise to the best interests of the Government after due consideration has been given to all of the factors involved.

(e) The Invitations for Bids shall provide that the contractors shall submit, simultaneously with their responses to Invitations for Bids, unit prices for each item of specification work in a separate sealed envelope. Only the envelope containing the separate item prices of the contractor determined to be the low bidder shall be retained by the representative of the Authority and shall not be opened until after the award is made. All other envelopes containing separate item prices shall be returned unopened to each contractor by the representative of the Authority. In the event the low bid is rejected, the itemized prices of the low bidder shall be returned to him in the unopened envelope. Item prices submitted by contractors will not be subject to public perusal.

(f) Vessel repair work contracted for by representatives of the National Shipping Authority is subject to the provisions of the Davis-Bacon Act, except in those cases where at the time of the issuance of the Invitations for Bids the site of the work is not known. Where bids are being invited from bidders in more than one port area, the port area in which the award will be made will not be known, and the Invitations for Bids, accordingly, must state that the work in question is not subject to the Davis-Bacon Act.

(g) The Invitations for Bids shall also include a statement of the per day liquidated damages, for the particular type vessel on which the work is to be performed.

(h) The Invitation for Bids shall state where the bids are to be opened.

(i) When Invitations for Bids are issued by a General Agent, the General Agent, at the time the invitations are issued shall make available to the local Ship Repair and Maintenance office, three (3) copies of the specifications, three (3) copies of a list of contractors to whom invitations have been sent, and three (3) copies of the Invitation for Bids.

(j) Where the scope and probable cost of the work and the time required for effecting such work are secondary as compared to the ship's time, and where the preparation of formal specifications and the issuance of formal Invitations for Bids are not practicable, the representative of the Authority may orally contact as many qualified contractors as is feasible, in order to obtain written "Spot Bids." Each contractor who indicates its intention to bid shall be fully advised as to the specific work involved and given an opportunity to inspect the vessel to enable it to prepare a bid. The contractor shall be verbally advised of a time and place for the submission of the "Spot Bids." If such bids are invited by the General Agent, the General Agent shall also advise the Coast Director or his duly appointed representative of the time and place of opening the "Spot Bids," and if practicable, the NSA representative shall attend such opening. If submission of such spot bids is not in writing the contractors shall immediately confirm their respective Spot Bids by written tenders. The representative of the Authority shall, if requested by responsive contractors, furnish invitations for bids and supporting specifications to the contractors.

Sec. 5. Procedure for negotiated price awards.

(a) In the award of vessel repair work upon the basis of negotiation or request for quotation, other than work covered by a supplemental job order, the contractor shall be furnished with the information provided for in Article 1(a) of the NSA-LUMPSUMREP Contract.

(b) The contractor, within the time specified in a request for a quotation, may quote a price and shall submit itemized prices and the price breakdown provided for in Article 1(c) of the NSA-LUMPSUMREP Contract. In the event a mutually satisfactory price cannot be agreed to, a price shall be determined by the representative of the Authority making the award which shall be set out in the job order or the supplemental job order issued to the contractor. Within thirty (30) days from the receipt of such job order or supplemental job order the contractor may appeal such price to the Director of the Authority as a dispute under Article 27 of the NSA-LUMPSUMREP Contract.

Sec. 6. Awarding of work.

(a) Those portions of all bids reflecting the total aggregate cost of the work involved shall be opened publicly. The work shall be awarded to the contractor submitting the lowest qualified bid. The term "lowest" shall mean the bid most advantageous to the Government after evaluation of all bids by the application of differentials and any other relevant factors set forth in the Invitation for Bids. All pertinent costs of moving the vessel from the port where said vessel is located at the time bids are invited to the port of the responsive bidders' work sites and/or plants are to be stated on the Invitation for Bids. If the vessel is scheduled to return to the same port where located at the time bids were invited, all costs of returning the vessel to that port shall also be included on the Invitation for Bids and considered in the bid evaluation.

(b) Immediately after an award of a job order or a supplemental job order on a negotiated basis a written report shall be submitted by the representative of the Authority, making the award, to the appropriate Coast Director's office stating the pertinent reasons for awarding the job on a negotiated rather than bid basis. A copy of this report must be attached to the Ship Repair Summary.

(c) When an award is made, a job order in the form attached to the NSA-LUMPSUMREP Contract shall be issued to the contractor and when awards are made in excess of the Coast Directors' Authority one copy each of all job orders and supplemental job orders and supporting specifications are to be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, D.C., simultaneously with the issuance of said orders to the contractors.

Sec. 7. Job order numbering.

(a) The NSA-LUMPSUMREP Contract number shall be inserted in every job order and supplemental job order thereto awarded to a Contractor. The Chiefs of local Ship Repair and Maintenance offices shall give consecutive numbers starting with No. 1 to job orders awarded by them to each contractor. The General Agents shall give consecutive numbers starting with No. 1 to job orders awarded by each General Agent. Job orders and supplemental job orders covering work awarded by a General Agent shall bear the initials of the prime General Agent, as a prefix to the numeral for example, "Job Order No. USL-1." Thus, the first award made by a local Ship Repair and Maintenance office to each respective master repair contractor shall bear "Job Order No. 1". The first award made by each General Agent to each respective master repair contractor shall also bear "Job Order No. 1" and in addition the Prime General Agents initials. Sub-agents shall use the initials of the Prime General Agent in identifying the job order number. Any additional means of numbering other than the numeral and Prime Agent's initials are not to be used. Supplemental job orders shall contain the original job order number suffixed by the letter "A" on the first supplemental job order, the letter "B" on the second supplemental job order, and so forth.

Sec. 8. Extra work and changes.

(a) At any time after the award of an original job order and during the time the work thereunder is being performed, additional or extra work or changes in the work covered by the job order may be directed by the representative of the Authority.

(b) Such additional or changed work shall be directed by a written Change Order as provided in Article 6 of the NSA-LUMPSUMREP Contract.

(c) A supplemental job order shall be issued to the Contractor covering such Change Order(s), which supplemental order shall include the agreed amount of contract price increase or decrease and any revision in the completion date of the job order work, as modified by the Change Order(s).

(d) In the event a change in the contract price or revision in the completion date cannot be agreed upon the representative of the Authority shall determine the contract price or revised completion date and issue a supplemental job order to the contractor who shall proceed with the work covered by the Change Order(s) and the Contractor may appeal such contract price or revised completion date as provided in Article 27 of the NSA-LUMPSUMREP Contract.

Sec. 9. **Payment.**

(a) Repair contractors invoices covering work awarded by the field staff of the National Shipping Authority:

(1) Repair Contractors will submit invoices for repair costs covered by job orders under Master Repair Contract or work orders under WORKSMALREP Contracts, directly to the local office of the National Shipping Authority awarding the work.

(2) The local office of the National Shipping Authority will:

(i) Review repair contractors' invoices to determine that the charges have been billed in accordance with the prices provided in the job order and repair contract.

(ii) Attach to each repair contractor's invoice, a copy of the WORKSMALREP work order or job order and supplemental job order(s), if any; a signed completion certificate; and, in the case of competitive bids, abstract of bids listing the contractors who submitted bids, the bid prices and completion time specified by each contractor, the name of the contractor to whom the work was awarded, and an explanation of the basis for the award when the contract is not awarded to the lowest bidder.

(iii) Review each repair contractor's invoice and attachments to ascertain completeness of supports and whether repair items included therein have been placed under the appropriate repair group numbers as set out in section 18 and make corrections as necessary.

(iv) Forward the invoices and supports to the District Ship Repair and Maintenance office for final review.

(3) The District office shall make a final review and if in order forward the contractor's invoices and other supports relating to (i) voyage and idle status repairs to the principal office of the General Agent, and (ii) reactivation repairs and all others which do not involve General Agency operated ships to the appropriate District Finance Officer.

(4) The General Agent, upon receiving repair contractors' invoices and attachments thereto from the District Ship Repair and Maintenance office will:

(i) Review each invoice and attachments to assure that the payment authorized by the District office appears to be proper on the basis of the attachments.

(ii) Upon determination that all necessary supporting documents are attached, make payment directly to the contractor.

(5) The District Finance Officer, upon receiving repair contractors' invoices pursuant to paragraph (a)(3)(ii) of this section will process them in accordance with prescribed procedures.

(b) Repair contractors invoices covering work awarded by General Agents:

(1) Repair contractors will submit invoices for repair costs covered by job orders under Master Repair Contracts or work orders and WORKSMALREP contracts directly to the principal office of the General Agent or authorized Sub-Agent contracting for the ship repair work.

(2) The General Agent or authorized Sub-Agent, upon receipt of an invoice from a contractor, will follow the procedure outlined in paragraph (a)(2)(i thru iii) and (4)(ii) of this section.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 10. Bonds.

(a) All bids in response to an Invitation for Bids and all quotations in response to a request for a quotation in excess of $2,000, shall be accompanied by a guaranty or a bid bond in a sum equal to twenty-five (25) percent of such bid or quotation to insure the acceptance of the job order covering the awarded work and the furnishing of the performance and payment bonds required by Article 14 of the NSA-LUMPSUMREP Contract. The standard Government form of bid bond (Standard Form 24 Revised November 1950) shall be used.

(b) In compliance with the performance bond and payment bond requirements of Article 14 of the NSA-LUMPSUMREP Contract, the standard form of individual performance bond (Standard Form 25 Revised November 1950) and the standard form of individual payment bond (Standard Form 25A Revised November 1950) respectively, shall be used. Such bonds (in the respective penal sums of 50 percent of the respective job order contract prices but if the job order contract price is in excess of $1 000,000 in the penal sum of 40 percent of such job order contract price) shall guarantee the Contractor's performance and payment obligations in connection with the work covered by an original job order awarded on either competitive bid or negotiated basis, as that work may be modified by supplemental job orders to such original job orders.

(c) The individual bid, performance and payment bonds shall be submitted by the contractors to the awarding offices (General Agents or local offices of NSA) to verify the correctness of the penalty amount, contract and job order numbers, etc. The individual bonds shall then be forwarded by the awarding office to the office of the appropriate Coast Director for final action and approval pursuant to existing regulations.

(d) For the convenience of contractors, in lieu of submitting individual bid, performance and payment bonds they may file with the Authority approved annual or blanket bid, performance and payment bonds covering the Contractor's bond obligations under job orders (as such job orders may be modified by supplemental job orders) awarded under said contracts in such annual period. Annual bonds shall be submitted by the Contractors or their surety representative to the appropriate Coast Director's office for clearance pursuant to existing regulations. In this regard all annual bonds must be of the open penalty type.

(e) No repair voucher (progress or final) where bond coverage is required shall be passed for payment until such time as the required bid, performance and payment bonds have been given final clearance.

Sec. 11. Guarantee obligations.

(a) Under the provisions of Article 10 of the NSA-LUMPSUMREP Contract the Contractor's guarantee liability extends to defects and deficiencies in the Contractor's work developing within sixty (60) days from the date of the acceptance of all the work and the accepted redelivery of the vessel to the Authority.

(b) Notice of such defects and deficiencies must be given to the Contractor not later than ninety (90) days after the acceptance of the work.

(c) As soon as practicable, after the acceptance of work performed under a job order, and the supplemental job orders thereto, the office awarding the job order shall furnish to the General Agent two copies of the specifications, job order and supplemental job orders, together with a statement of the date of the expiration of the Contractor's guarantee responsibility with respect to some work.

(d) The General Agent shall during the period of the Contractor's guarantee responsibility screen all deficiencies and defects and repair items and list separately against the respective specifications, all items which represent defects or deficiencies in the Contractor's work.

(e) In order that the Contractor may be notified of such defects and deficiencies prior to the expiration of the 90-day notice period, the General

Agent, particularly with respect to vessels in foreign ports or vessels which may be at sea, shall instruct the Master of the respective vessel to forward the information with respect to defects and deficiencies in the Contractor's work to the General Agent's home office by the most expeditious manner of communication.

(f) In connection with all deficiencies and defects, referred to in paragraph (d) of this section, the General Agent shall immediately notify the Contractor and the local Ship Repair and Maintenance Office Head in the vessel's port of call with copies of such notification to the Chief, Division of Ship Repair and Maintenance in Washington, D.C., in all cases and to the Chairman, Trial and Guarantee Survey Boards, if the total contract price is equal to or in excess of $100,000. If practicable, the local Ship Repair and Maintenance Office Head shall arrange to view the defective or deficient work in question and, if possible, shall secure the correction of such defects or deficiencies by the Contractor in question.

(g) The General Agent, and the representative of the local Ship Repair and Maintenance staff, who acted under the provisions of paragraph (e) of this section promptly shall file with the Chief, Division of Ship Repair and Maintenance in Washington, D.C., and also with the Chairman, Trial and Guarantee Survey Boards, if the total contract price equals or exceeds $100,000, separate or concurring reports setting out the defects and deficiencies, describing the actual conditions found, causes of failure, and the disposition of each defect or deficiency item.

Sec. 12. Disposition of removed equipment and scrap.

(a) Article 8 of the NSA-LUMPSUM REP Contract provides that any ship equipment, fuel, lube oil, supplies, stores, furniture, fixtures, salvage and other movable property removed from the vessel is the property of the United States and shall be disposed of in such manner as the Authority may direct within sixty (60) days from the date of the completion of the work. The representative of the Authority, by appropriate item in the specifications, shall cause the Contractor to segregate all equipment, salvageable material and scrap, removed from a vessel in the performance of repairs, in such a manner as to be readily identifiable, and shall submit a list thereof to the local Property and Supply office which is responsible for arranging for retention, disposal, etc., of said equipment, material, and scrap. A copy of the listing is to be attached as a support to the Ship Repair Summary (MA-159).

(b) After the 60-day period, if no direction for disposal is given the Contractor, the Contractor shall store and protect, in the shipyard or outside of the shipyard at its election, such property of the United States, for the additional period directed by said local Property and Supply office who shall furnish a copy of such written direction to the representative of the Authority. The increased contract price for the cost of the storage for such additional period shall be covered by purchase order prepared by the local Property and Supply office.

(c) All scrap removed from the vessel shall be the property of the United States and shall be handled as provided in paragraph (b) of this section: *Provided, however,* That any scrap or salvage may, upon the written approval of the local Property and Supply office, be purchased or disposed of by the Contractor at the prevailing market price, or at not less than the fair value thereof in the absence of an established market therefor. The net sales price of the scrap or salvage disposed of by the Contractor shall be promptly paid to the office of the District Finance Officer, or at the option of the office of the District Finance Officer, shall be credited against the moneys due or to become due the Contractors.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 13. Insurance.

Article 9 of the NSA-LUMPSUM REP Contract sets forth the Contractor's liabilities and obligations with respect to awarded work. Said Article 9 requires that the Contractor shall maintain insurance to cover such liabilities and obligations. Evidence of such insurance shall be submitted to the Chief, Division of Insurance, Washington, D.C., by the contractors for approval.

Sec. 14. Anti-Kickback and Davis-Bacon Acts.

(a) All work awarded under the NSA-LUMPSUMREP Contract is subject to the provisions of the Anti-Kickback Act, and is also subject to the provisions of the Davis-Bacon Act (except in those cases where the Invitations for Bids or job order state that the work covered thereby is not subject to the Davis-Bacon Act). Article 24 of the NSA-LUMPSUMREP Contract requires the compliance of Contractor and its subcontractors with the applicable provisions of said acts. In this respect the Contractor agrees in the NSA-LUMPSUMREP Contract to comply with the regulations of the Secretary of Labor made pursuant to the Anti-Kickback Act.

(b) The Contractor shall, as provided in Article 24(a) of the NSA-LUMPSUM REP Contract, post at the site of the work the wage determination decision of the Secretary of Labor as provided in said Article 24(a).

(c) It shall be the responsibility of the representative of the Authority awarding the work to determine that the Contractor has made the postings required by Article 24(a) of the NSA-LUMPSUMREP Contract.

(d) In lieu of submitting weekly certified copies of all payrolls to the Authority, as provided in Article 24(d) of the Master LUMPSUMREP Contract the Contractor shall maintain his weekly payrolls for a period of three years and submit weekly an affidavit that the payrolls of the Contractor for the preceding week are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each labor mechanic conforms with the work he performed. The Contractor shall also submit, and shall be responsible for the submission by its subcontractors of the Anti-Kickback Act affidavits as provided in Article 24(f) of the Master LUMPSUMREP Contract. The Contractor shall submit one copy of each of the weekly payroll and Anti-Kickback Act affidavits to the Records Administration Section, Maritime Administration, Washington 25, D.C.

(e) The representative of the Authority shall require Contractors, pursuant to the provisions of Article 24(d) of the NSA-LUMPSUMREP Contract, to classify or reclassify any class of laborers or mechanics employed on National Shipping Authority contract work and not listed in the Secretary of Labor's decision (schedule of wages). A report of such cases shall be forwarded to the District Ship Repair and Maintenance office for transmittal to the Office of Maritime Labor Policy.

(f) The representatives of the Authority shall be responsible for establishing procedures insuring that Contractors are complying with the Davis-Bacon Act and in cases of non-compliance withhold payment of contractors' invoices.

(g) The following certification shall be inserted by all contractors on all invoices rendered covering work awarded under the Master Repair Contract subject to the Anti-Kickback and Davis-Bacon Acts.

> I hereby certify that in performing the work for which the invoice was rendered that all applicable terms and conditions of the Anti-Kickback and Davis-Bacon Acts as provided in the Master Repair Contract and regulations of the Department of Labor have been complied with.

Sec. 15. Subcontracts.

Under Article 29 of the NSA-LUMPSUMREP Contract, the Contractor is authorized to subcontract portions of the work. However, the Contractor must obtain prior approval from the representative of the Authority, awarding the work, for each subcontract in an amount exceeding 10 percent of the contract price for the work covered by a job order or supplemental job order.

Sec. 16. Liquidated damages.

(a) The liquidated damages payable for each calendar day of delay shall be placed on each job order and supplemental job order whether awarded on a competitive bid or negotiated basis.

(b) The completion certificates are to contain the date on which work is actually completed, whereas the job order and supplemental job orders are to contain a completion date based on a fair and reasonable estimate of time to be allowed the contractor to perform the work. Thus, the difference between the completion date specified on the job order or supplemental job orders and on the completion certificates will be the period for which liquidated damages are assessed. If an extension of an original completion date is considered justifiable, the completion certificates are to bear in detail in the space provided for "exceptions" the reasons why the completion dates were extended beyond that specified in the original job orders. The face of the Ship Repair Summaries (MA-159) shall reflect the amounts of liquidated damages. The penalty amount shall be deducted from the invoice prior to payment for the work involved.

[18 FR 5035, Aug. 22, 1953; 18 FR 5294, Sept. 2, 1953. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 17. Performance of work resulting from damage sustained while undergoing repairs.

(a) When damage is sustained by a vessel during performance of repairs under the NSA Master Contract, negotiations for accomplishment of work necessary to correct such damage are to be made with the repair contractor involved, if practicable, and a job order issued to the contractor for the repair of damage. Such job orders are to be assigned a new number and are not to be supplemental to the original award. The following "without prejudice" clause is to be made a part of and place on each job order issued for the performance of work discussed in this section.

> It is understood and agreed that the work covered by this job order is awarded and accepted without prejudice to, or waiver of, any rights of the United States or the Contractor.

(b) If it is determined that the contractor is at fault and the contractor refuses to accept the responsibility, the procedure outlined in Article 27 of the master repair contract shall be followed. It is to be understood that the payment of this type of account is to be withheld pending establishment that the contractor involved is relieved of all responsibility for the damage.

(c) In the event other than the original contractor effects the damage repairs immediate arrangements are to be made by and through the General Agent to collect from the contractor considered responsible for the damages.

(d) A damage survey is to be conducted in all such cases and a report thereon submitted to the Chief, Division of Ship Repair and Maintenance, Washington, D.C.

Sec. 18. Group classification.

In the preparation of specifications, Job Orders, Supplemental Job Orders and WORKSMALREP Contracts costs by Group Numbers as set forth and described below are to be inserted thereon:

Number	Classification
41	*Maintenance Repairs* (deck, engine and stewards department repairs resulting from wear and tear).
42	*Original installation of, repairs to, and removal of national defense features.*
44	*Conversions* (conversion of vessels to troop carriers, hospital ships, and for other special purposes).
51	*Alterations, Additions and Betterments* (additional equipment, such as, spar decks, heavy lift equipment, change of cargo or passenger space, increasing speed of vessel, and structural changes).
52	*Strengthening of Newly Constructed Vessels* (strengthening of vessels according to program).
54	*Damage Repairs* (claimed as a result of enemy action, heavy weather, stranding, collision, fire, stevedore damage, ice damage, and other damages). NOTE: All items chargeable to each separate casualty to be properly identified and segregated both with respect to casualty and cost.
63	*Builders' and Vendors' Guaranty Work* (repairs and replacements chargeable to builders and vendors of equipment—separate cost to be furnished for each item).
64	*Repair Contractors' Guarantee Items* (repairs to correct deficiencies due to faulty workmanship and/or materials incident to prior repairs performed under provisions of Master Repair Contract where responsible contractor did not effect the necessary corrections).
65	*Other Costs* (temporary lights, garbage disposal, tugs to shift vessel while in contractors' yard, and other miscellaneous work requiring distribution of costs over more than one group).

Number	Classification
66	*Miscellaneous Expenses Applicable to Voyage Operating Expense* (removal of cargo debris, fresh water when not required for testing purposes, cleaning cargo and other tanks where no repairs or alterations are involved, and other similar expenses).
67	*Preparation of Vessels for Lay-up* (stripping, draining and preservation. No repairs to be included in this grouping).

Sec. 19. Ship Repair Summaries.

(a) Ship Repair Summaries shall be prepared on Form MA-159 by the General Agents and local offices of the Authority covering all work performed under their respective jurisdiction and submitted to the District Ship Repair and Maintenance office involved. The summaries must be properly identified and contain the correct cost breakdown as set forth in this order. If the summary covers work other than repairs related to a voyage, the summary must so state, e.g., reactivation, lay-up, idle status, etc. The District Ship Repair and Maintenance office shall review the summaries and supports to ascertain that they have been properly prepared in all respects. The originals of all summaries unsupported shall be forwarded by the District offices to the Chief, Operating Cost Control Branch, Office of Ship Operations, National Shipping Authority, Washington, D.C., and two copies each of all summaries one of which is to be supported by one copy each of job orders, supplemental job orders, invitation for bids, specifications, invoices, itemized prices, completion certificates, ABS invoices and reports, purchase orders, price warehouse delivery tickets, property removal notices, WORKSMAL REP Contracts, a statement that bid, performance and payment bonds were received and approved, abstract of bids containing the list of contractors invited to bid and response of each, an explanation of the basis for an award when the contract is not awarded to lowest bidder, listing of scrap, salvageable material and equipment removed from a vessel, etc., shall be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, D.C.

(1) Within 60 days after termination of the respective voyages for work awarded by General Agents.

(2) Within 30 days after completion of all work awarded by the Local Offices within a port area.

(b) In the event invoices for particular services are not available such as American Bureau of Venders Inspectors fees, the summary is nevertheless to be prepared as outlined in this order and estimated costs for the missing billings set forth on the summary. Upon receipt of said invoices a supplementary summary shall promptly be prepared and distributed as outlined in this section.

(c) If no work is performed under a General Agent's jurisdiction for a particular voyage, the General Agent must submit for distribution as stated herein a repair summary stating across the face that no repairs, either foreign or domestic, were performed for the particular voyage involved.

Sec. 20. Reports of awards.

(a) The Coast Directors shall submit to the Chief, Division of Ship Repair and Maintenance, Washington, D.C., a monthly listing of all awards made under their jurisdiction. This listing shall reflect individually the complete contract number, contractor, vessel, type of award, e.g., negotiated or bid, costs and repair period. This listing shall be submitted substantially in the following form:

Contractor	Contract No.	Vessel	Award	Amount	Start	Completed
Steamboat Repairs, Inc.	MA-600 J.O.1	John Doe	Bid	$15,000	Jan. 1, 1953	Jan. 10, 1953
Steamboat Repairs, Inc	MA-600 J.O.1A	John Doe	Negotiated	1,000		Jan. 11, 1953

(b) If no work was awarded during a reporting period, a report to that effect is to be made.

(c) The Coast Directors are to attach to their monthly reports, the originals of the monthly reports submitted by the General Agents pursuant to section 3(d) of NSA Order 34 (SRM-3, Revised).

Sec. 21. Delegations of authority.

(a) The term "authorized representative of the Authority" appears in several of the contract provisions of the NSA-LUMPSUMREP Contract. The respective representatives of the authority are the "authorized representative of the Authority" for the respective contract provisions as set out in this section:

(b) Articles 1 and 2—Chief, Division of Ship Repair and Maintenance, Coast Directors, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents (within the General Agents' contract limitations); Article 3—Maritime Administration Marine Surveyors, Chief, Division of Ship Repair and Maintenance, Coast Directors, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices; and General Agents (within the General Agents' contract limitations); Article 4—Coast Directors, Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents; Article 5—Maritime Administration Marine Surveyors and General Agents; Article 6—Coast Directors, Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents (within the General Agent's contract limitations); Article 7—Chiefs of District Ship Repair and Maintenance Offices, Chiefs of Local Ship Repair and Maintenance Offices, and Maritime Administration Marine Surveyors; Article 18 (d)—Coast Directors; Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents in connection with work awarded by General Agents; Article 27—Coast Directors, Chiefs of District Ship Repair and Maintenance offices and Chiefs of Local Ship Repair and Maintenance offices.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 21 FR 8106, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

PART 339—PROCEDURE FOR ACCOMPLISHMENT OF SHIP REPAIRS UNDER NATIONAL SHIPPING AUTHORITY INDIVIDUAL CONTRACT FOR MINOR REPAIRS—NSA-WORKSMALREP

Sec.

1. What this order does.
2. Description of NSA-WORKSMALREP Contract.
3. When the NSA-WORKSMALREP Contract may be used.
4. Persons authorized to make awards under NSA-WORKSMALREP Contract.
5. Responsibility for duplicating copies of NSA-WORKSMALREP Contract.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply R.S. 3709, as amended; 41 U.S.C. 5.

SOURCE: SRM-6, Revised, 18 FR 5040, Aug. 22, 1953. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. What this order does.

This order authorizes the use of NSA-WORKSMALREP individual contract for minor repairs to Maritime Administration owned or controlled vessels. The procedure to be followed by the field personnel of the Authority, the General Agents of the Authority, and the ship repair contractors is set forth in the "General Provisions for Small Repairs" and, therefore, no further reference is made to said procedure herein.

Sec. 2. Description of NSA-WORKSMALREP Contract.

This is an individual fixed price contract which may be awarded to any firm not holding an NSA-LUMPSUM REP Contract, as a result of formal competitive bids, spot bids, or by negotiation for the performance of ship repair work. NSA Order No. 46 (SRM-5, Revised) sets forth the conditions when work may be awarded on the basis of formal competitive bids, spot bids or negotiation, therefore, further reference thereto will not be made herein.

Sec. 3. When the NSA-WORKSMALREP Contract may be used.

This contract may be used for awards to firms performing specialized work such as repairs to and adjustment of compasses, direction finders, radios, refrigerators, etc., as well as minor voyage repairs of a general nature and fees of the American Bureau of Shipping. The use of this contract is limited to awards not to exceed a total aggregate cost of $2,000.

Sec. 4. Persons authorized to make awards under the NSA-WORKSMALREP Contract.

Authority is hereby delegated to the Atlantic, Gulf and Pacific Coast Directors, Chiefs of Local and District Ship Repair and Maintenance Offices and the General Agents to make awards under this form of contract, provided the aggregate cost of the work does not exceed $2,000, and is within their expenditure limitations.

Sec. 5. Responsibility for duplicating copies of NSA-WORKSMALREP Contract.

It will be the responsibility of the several Coast Directors, Local and District Ship Repair and Maintenance Offices and the General Agents to duplicate copies of the work order form and general provisions to suit their respective needs.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

Sec.

340.1 Scope.
340.2 Definitions.
340.3 General provisions.
340.4 Shipping services.
340.5 Containers.
340.6 Port facilities and services.
340.7 Application to contractors and subcontractors.
340.8 Priorities for materials and production.
340.9 Compliance.

Authority: Defense Production act of 1950, (DPA) as amended (50 U.S.C. App. 2061 *et seq.*); Executive Order 10480, as amended (18 FR 4939); Executive Order 11490, as amended (34 FR 17567); 44 CFR Part 322; 49 CFR 1.45; Department of Transportation Orders 1100.60, as amended; 1900.8 and 1900.7C.

Source: 49 FR 49632, Dec. 21, 1984, unless otherwise noted.

§ 340.1 Scope.

This part establishes procedures for assigning priority for use by defense agencies, on commercial terms, of commercial shipping services, containers, and port facilities and services and for allocating vessels employed in commercial shipping services, containers, and port facilities and services for exclusive use by defense agencies (as defined in § 340.2), at any time where appropriate under provision of Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*) as determined by the Secretary of Transportation. The procedures will provide the means to require vessel and port operators to provide defense agencies with existing commercial services and facilities not obtainable through established transportation procurement procedures. Thus the procedures will minimize interference with commercial operations and ensure rapid response to defense needs in times of crisis or war.

§ 340.2 Definitions.

As used in this regulation:

(a) "Administrator" means the Maritime Administrator, Department of Transportation, who is, ex officio, the Director, National Shipping Authority, within the Maritime Administration (MARAD). Pursuant to 49 CFR 1.45(a)(5), the Maritime Administrator is authorized to carry out emergency preparedness functions assigned to the Secretary by Executive Order 11490, as amended (34 FR 17567, October 30, 1969).

(b) "Container" means any type of container for intermodal surface movement that is 20 feet in length or longer, 8 feet wide, and of any height, with International Standards Organization standard fittings.

(c) "Container service means the intermodel movement, which includes an ocean movement leg, of goods in containers.

(d) "Container service operator" means a vessel operator (defined in § 340.2(t)) that provides containerized ocean shipping service.

(e) "Container supplier" means a U.S.-citizen controlled (pursuant to 46 U.S.C. 802) company which manufactures containers, is a container service operator, or is in the business of leasing containers.

(f) "Defense agency" means the Department of Defense, or any other department or agency of the Federal Government as determined by the Secretary of Transportation, for the purposes of this regulation.

(g) "FEMA" means the Federal Emergency Management Agency.

(h) "NAO" means the NSA Allocation Order, which is an order allocating the exclusive use of a vessel employed in commercial shipping service, a container or a port faciltiy for the purposes of providing its services to a defense agency for a specified period.

(i) "National defense programs" means programs for military assistance to any foreign nation, stockpiling, space, and directly related activity.

(j) "NSA" means the National Shipping Authority, which is the emergency shipping operations activity of the Department of Transportation (MARAD).

(k) "NSPO" means an NSA Service Priority Order, which is an order directing that priority of service be given to the movement of cargoes of a defense agency.

(l) "Planning order" means a notification of tentative arrangements to meet anticipated defense agency requirements, issued by NAO or NSPO format, for planning purposes only.

(m) "Port authority" means any state, municipal, or private agency, or firm that (1) owns port facilities (2) manages such facilities for common-user commercial shipping services under lease from an owner; (3) owns or operates a proprietary port facility or terminal; and (4) otherwise leases or licenses and manages a port facility.

(n) "Port facilities and services" means (1) all port facilities, for coastwise, intercoastal, inland water ways, and Great Lakes shipping and overseas shipping, including, but not limited to wharves, piers, sheds, warehouses, yards, docks, control towers, container equipment, maintenance buildings, container freight stations and port equipment, including harbor craft, cranes and straddle carriers; and (2) port services normally used in accomplishing the transfer or interchange of cargo and passengers between vessels and other modes of transportation, or in connection therewith.

(o) "Secretary" means the Secretary of Transportation or his or her designees to whom emergency authorities under the Defense Production Act of 1950 have been delegated, i.e., the Director of Office of Emergency Transportation or the Departmental Crisis Coordinator.

(p) "Secretarial Review" means the process by which the Secetary or his or her designee(s) exercises review, coordination, and control over departmental emergency preparedness programs and/or matters.

(q) "Shipper" means a civilian or Government agency that owns (or is responsible to the owner for) goods transported in waterborne service.

(r) "Shipping service" means a commercial service for waterborne movement of passengers or cargo in the overseas, coastwise, intercoastal, inland waterways or Great Lakes shipping trades.

(s) "Vessel" means a vessel employed in commercial service for waterborne movement of passengers or cargo in the overseas, coastwise, intercoastal, inland waterways or Great Lakes shipping trades, or any portion of the cargo-carrying capacity of such vessel.

(t) "Vessel operator" means a company owning and/or operating, to and from any U.S. port, an ocean-going overseas, coastwise, intercoastal, inland waterways or Great Lakes vessel that is U.S.-flag, or foreign-flag and U.S.-citizen controlled, (pursuant to 46 U.S.C. 802), or foreign-flag and non-citizen controlled that is made available to the United States (as described in § 340.3(j)).

§ 340.3 General provisions.

(a) The provisions of this rule apply pursuant to authority granted to the President by Title I, Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) that authority having been delegated to the Secretary of Transportation with respect to civil transportation services, by § 322.3(b) of Title 44, Code of Federal Regulations. In order to give priority to performance under contracts deemed necessary or appropriate to promote the national defense and to allocate materials and facilities in such manner, upon such conditions and to such extent as necessary or appropriate to promote the national defense, the following procedures shall be applicable;

(1) In connection with deployment of the Armed Forces of the United States, or other requirements of the nation's defense, a defense agency (as defined in § 340.2(f) of this part) may request priority use or allocation of vessels employed in commercial shipping services, containers, or port facilities and services;

(2) The Secretary may authorize initiation of priority and allocation authority usage in accordance with administrative and statutory authorities;

(3) The Administrator, on approval by the Secretary of initiation of priority and allocation authority usage under this regulation and in conformance with national program priorities, may direct owners and/or operators of vessels, containers or port facilities to give priority usage to the defense agency or may allocate vessels, containers or facilities for the defense agency's use during specified periods.

(b) A defense agency may transmit requests for assistance or allocation of vessels, containers and port facilities and services to the Secretary by letter, memorandum, or electrical message.

(c) Justification for requested priorities or allocations may include references to military operations plans. When classified, justifications may be provided separately by correspondence or staff coordination. NSPOs and NAOs will not include classified information.

(d) The Administrator shall determine, before issuing an NSPO or NAO, that the action is necessary to meet the requirements of the national defense (as determined by the defense agency) and conforms to Secretarial guidance for coordinating the Department's crisis response, and that the proposed approach is the most effective way to do so. The Administrator, in conjunction with the defense agency, shall coordinate with vessel operators, container suppliers, port authorities and the Coast Guard to identify vessels, equipment and facilities to meet requirements covered by NSPOs and NAOs. The Administrator shall ensure that arrangements to provide defense support under NSPOs and NAOs satisfy the defense agency's requirements with minimum disruption to commercial activities.

(e) When resources are required for movement of hazardous or other special cargo, the Administrator shall ensure that the Commandant of the Coast Guard and the Captain of the Port and other concerned hazardous materials officials of the U.S. Department of Transportation, as required, are notified and that the views of all concerned agencies and interests are obtained and reflected in actions taken pursuant to this regulation. Any action taken pursuant to this regulation shall conform with existing regulations for the safe transportation of hazardous materials and or cargoes subject to Department of Transportation exemptions.

(f) The Secretary shall notify FEMA of the intention to issue any directive granting priority for use or allocation of vessels, containers, or port facilities and services, and shall provide information copies of NSPOs and NAOs as required to the defense agency concerned, FEMA, the Interstate Commerce Commission and the Coast Guard.

(g) Defense agencies which foresee difficulty in meeting their needs for the vessels employed in commercial shipping services, containers or port facilities and services shall coordinate with MARAD, the Coast Guard, vessel operators, container suppliers and port authorities concerned before the need arises. The Administrator, after Secretarial review, may issue planning orders for information and guidance of affected agencies confirming tentative arrangements to meet the defense agencies' needs. No action will be taken to give effect to those arrangements until NSPOs and NAOs are issued at the time the services, equipment, or facilities are required.

(h) Defense agencies shall pay for services covered by NSPOs and NAOs on the basis of commercial tariffs, or on the basis of contracts concluded between the operator interests and the defense agencies concerned, or on the basis of existing contracts where both parties so agree.

(i) Defense agencies shall be responsible for payment of costs arising from:

(1) Shifting ships to free berths for defense use;

(2) Discharging commercial cargo to free ships for defense use; and

(3) Such other costs as may be agreed between the defense agency and the provider of service.

(j) The provisions of this regulation shall apply to foreign vessels and containers only when and to the extent that such vessels and containers are available to the United States because of control by U.S. citizens (46 U.S.C. 802) or by provision of international agreements for use of shipping services and related resources for the common defense.

(k) Recipients of NSPOs and NAOs shall notify the Administrator, without undue delay, when they cannot comply or are experiencing difficulty in complying with the provisions of the Orders.

§ 340.4 Shipping services.

(a) When a defense agency requires shipping services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The type of service required;

(ii) The route over which priority of service is required;

(iii) The period during which priority of service is required; and

(iv) Justification for priority use of the requested service.

(2) The Administrator, pursuant to the circumstances in § 340.4(a)(1), shall identify vessel operators that can provide the necessary service and issue NSPOs in coordination with the Secretary to those operators directing that priority be given to the movement and delivery of the defense agency's cargo and/or passengers by the type of service specified in the NSPO during the specified period.

(3) Each vessel operator in receipt of an NSPO shall:

(i) Give precedence to the cargoes of the defense agency in provision of equipment, loading, ocean transport and foreign delivery; and

(ii) Coordinate with other operators in receipt of NSPOs applicable to the same priority movement program to ensure movement of the defense agency's cargoes on first available sailings.

(b) When a defense agency has need for vessels employed in commercial service on a continuing basis for national defense operations for a specified period or for the duration of a defense emergency which they cannot obtain through established transportation procurement practices, the following procedures shall apply:

(1) The agency shall transmit to the Secretary, with a copy to the Administrator, a request specifying the kinds of services required, the arrangements

under which the agency proposes that the services be acquired, managed and compensated, and justification for allocation of the required vessels.

(2) The Administrator, upon receiving guidance from the Secretary, shall identify vessel operators that can supply the requested services and issue NAOs to operators directing that specified vessels be made available for use of the defense agency for specified periods. As far as practicable, the economic impact will be balanced among operators.

(3) Each vessel operator in receipt of an NAO shall provide vessels in coordination with the defense agency as specified in the NAO.

§ 340.5 Containers.

(a) When a defense agency requires priority use of containers not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The route over which or the area in which priority use of containers is required;

(ii) The period during which priority use is required;

(iii) The approximate time-phased movement requirement in containers of specified sizes and types or in 20-foot equivalent units (TEU); and

(iv) Justification for priority use of containers.

(2) The Administrator pursuant to the circumstances in § 340.5(a)(1) shall:

(i) Identify container service operators capable of meeting the requirement; and

(ii) Issue NSPOs in coordination with the Secretary to those container service operators, directing that priority be given to supply of containers against the defense requirement.

(3) Each container service operator in receipt of an NSPO shall:

(i) Coordinate with the defense agency on schedules for spotting empty containers and for movement of containerized cargoes; and

(ii) Supply containers to the defer agency in accordance with the defer agency's scheduling needs or supp the first available containers if tho needs cannot be met.

(b) When a defense agency requir the allocation of containers on a co tinuing basis for national defense o erations, the following procedur shall apply:

(1) The agency shall transmit to th Secretary, with a copy to the Admini trator, request specifying:

(i) The number of containers r quired by type;

(ii) The general terms and cond tions under which the agency propose to acquire the needed containers an compensate the owners or operators;

(iii) The expected duration of the lease, if the containers are to b leased;

(iv) The locations at which the agency will take possession of the containers and the required delivery schedule; and

(v) Justification for allocation of containers.

(2) The Administrator in coordination with the Secretary shall identify container suppliers that can supply the required containers, and shall provide, so far as practicable, for balancing the defense agency's requirement against other requirements for containers so as to minimize disruption of inventory distribution, and shall issue NAOs to suppliers, directing the allocation of specified numbers of containers by type for exclusive use of the defense agency for a specified period.

(3) Each container supplier in receipt of an NAO shall deliver the containers specified in the NAO to the defense agency at the places and times specified in the NAO or separately agreed upon with the defense agency, under terms and conditions agreed upon with the defense agency.

§ 340.6 Port facilities and services.

(a) When a defense agency requires priority use of port facilities and services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The ports at which priority use of port facilities and services are required and the kinds of facilities and services required at each port;

(ii) The approximate scale and duration of the operation for which priority support is required; and

(iii) Justification for priority use of port facilities and services.

(2) The Administrator in coordination with the Secretary shall issue NSPOs to the port authorities concerned, directing that priority be given to the receipt, in transit handling, and outloading of the defense agency's cargo during a specified period and specifying the facilities and services required.

(3) Each port authority in receipt of an NSPO shall:

(i) Make such dispositions of commercial cargoes and ships loading or discharging commercial cargoes as may be necessary to accommodate priority movement of the defense agency's cargoes; and

(ii) Ensure receipt, in transit handling and outloading of the defense agency's cargoes as rapidly as possible.

(b) When a defense agency requires the allocation of port facilities for exclusive use of the agency on a continuing basis, the following procedures shall apply:

(1) The agency shall transmit a request to the Secretary, with a copy to the Administrator specifying:

(i) The ports at which the allocation of facilities is required and the kinds of facilities needed at each port;

(ii) The general terms and conditions under which the agency proposes to acquire the needed facilities and compensate the owners or leaseholders;

(iii) The periods during which the facilities will be required; and

(iv) Justification for allocation of facilities.

(2) The Administrator in coordination with the Secretary shall identify facilities that meet the defense agency's needs, and shall issue to each concerned port authority and NAO directing the allocation of specified facilities for exclusive use of the defense agency during a specified period.

(3) Each port authority in receipt of an NAO shall make the specified facilities available to the defense agency for the specified period under terms and conditions agreed upon with the defense agency.

§ 340.7 Application to contractors and subcontractors.

(a) Vessel operators, port authorities and container suppliers requiring priorities for production services in order to comply with NSPOs and NAOs must submit their priority requirements for such services to the Maritime Administrator for action in accordance with Departmental policies governing supporting resource support.

(b) Vessel operators, port authorities requiring priorities for fuel in order to comply with NSPOs and NAOs must submit their priority requirements for fuel in accordance with Departmental policies governing supporting resources.

§ 340.8 Priorities for materials and production.

(a) Vessel operators, port authorities and container suppliers may request priority ratings to obtain production materials and services necessary to comply with orders issued under this regulation. Requests for priority rating authority must be made through and sponsored by the Maritime Administrator, in accordance with the Defense Priorities and Allocation System (15 CFR Part 330 *et seq.* (49 FR 30412, July 30, 1984)) and Departmental policies governing supporting resources support.

(b) Vessel operators, port authorities and container suppliers may request priority ratings to obtain fuels necessary to comply with orders issued under this regulation. Requests for priority ratings will be made in accordance with regulations issued by the Department.

§ 340.9 Compliance.

Pursuant to section 103 of the Defense Production Act, 1950 (50 U.S.C. App. 2073), any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

SUBCHAPTER I-B—CONTROL AND UTILIZATION OF PORTS

PART 345—RESTRICTIONS UPON THE TRANSFER OR CHANGE IN USE OR IN TERMS GOVERNING UTILIZATION OF PORT FACILITIES

Sec.
1. Definitions.
2. Effective date.
3. Federal control of port facilities.
4. Port facilities predesignated for emergency use.
5. Restrictions on the transfer, or change in use or in terms governing utilization of port facilities.
6. Application for approval; place of filing; investigation; disposition by Federal Port Controller; request for review; disposition by the NSA.
7. Exemptions.
8. Applicability.
9. Communications.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et seq.); Reorganization Plan No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, 3 CFR 1966-1970 Comp., p. 820) and E.O. 11921 (41 FR 24294, 3 CFR 1976 Comp.); and Dept. of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

SOURCE: 44 FR 9381, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Sec. 1. Definitions.

As used in this part or any other part of this Chapter XIX the term:

(a) "National Shipping Authority (NSA)," means the emergency shipping operations activity of the Maritime Administration established by the Secretary of Transportation, when specifically activated during an emergency affecting national security in accordance with existing statutory authority.

(b) "Person" means any individual, partnership, corporation, association, joint stock company, business trust, or other organized group of persons, or any trustee, receiver, assignee, or personal representative, and includes any department, agency, or corporation of the United States, any State, or any political, governmental, or legal entity.

(c) "Federal Port Controller" means a person designated as such in accordance with part 1902 of this chapter XIX, under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the control of operations of a designated port or group of ports in time of national emergency.

(d) "Port" or "port area" includes any zone contiguous to or a part of the traffic network of an ocean or Great Lakes port, or outport location, including beach loading sites, within which facilities exist for transshipment of persons and property between domestic carriers and carriers engaged in coastal, intercoastal and overseas transportation.

(e) "Port facility" means a specific location in a port where passengers or commodities are transferred between land and water carriers or between two water carriers, specifically including: wharves, piers, sheds, warehouses, yards, and docks.

(f) "Port equipment" means mechanical and other devices used for loading and unloading passengers and commodities, including fork lifts, towmotors, jitneys, straddle carriers, floating cranes, etc.

(g) "Transfer" means to sell, lease, trade, lend, give, relinquish title or possession to, or to physically transfer in any other way.

Sec. 2. Effective date.

The provisions of this part are effective during the existence of a state of war or national emergency proclaimed by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

[44 FR 9381, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36709, July 15, 1981]

Sec. 3. Federal control of port facilities.

During any period when the provisions of this part are in effect the NSA shall exercise such control of ports in the United States and its territories or possessions as may be necessary to meet the requirements of the national security. Control shall be consistent with the orders of the Coast Guard Captain of the Port relating to the safety and security of the port.

Sec. 4. Port facilities predesignated for emergency use.

(a) Certain port facilities selected for standby contracts or agreements for use by Government agencies shall be controlled directly by the NSA.

(b) Facilities which are not required by the United States immediately on the effective date of this part will be released. The Director, NSA shall have the discretion to approve contracts for subsequent exclusive use by the United States of port facilities in lieu of formal requisitioning of such properties.

Sec. 5. Restrictions on the transfer or change in use or in terms governing utilization of port facilities.

Except as otherwise provided in this part, and irrespective of the terms of any contract or other commitment, whether or not the facility has been designated for emergency use in accordance with section 3 of this part:

(a) No person shall transfer, and no person shall accept transfer of any port facility unless such transfer has been approved by the NSA.

(b) No person shall use any port facility for any purpose or use other than that for which it was being used on the day preceding the effective date of this part, unless such change in purpose or use has been approved by the NSA.

(c) No person shall change or alter the terms or conditions under which any port facility was being operated or used on the day preceding the effective date of this part, unless such change has been approved by the NSA: *Provided*, That this restriction shall not relate to the filing of tariffs with the Federal Maritime Commission as required by applicable law.

Sec. 6. Application for approval; place of filing; investigation; disposition by Federal Port Controller; request for review; disposition by the NSA.

(a) Application for approval of a transfer of, or change in use of, or change in terms governing utilization of any port facility shall be in writing and shall contain the following information:

(1) Name, address, and principal place of business of applicant;

(2) Specific description and location of port facility involved;

(3) Name, address, and principal place of business of owner and/or operator of such port facility;

(4) Present use of such port facility;

(5) Proposed use of such port facility; and

(6) A statement of the reasons why such transfer, change in use, or change in terms, is in the interests of the war effort, national defense, or the maintenance of the essential civilian economy.

(b) The application shall be signed by the applicant or by any lawfully authorized agent or representative of the applicant who is familiar with the facts stated therein.

(c) The application and two clear copies thereof shall be filed in the office of the Federal Port Controller of the port in which the port facility is located, when a Federal Port Controller has been designated for the port. For all other ports, the application and copies shall be filed in the office of the Maritime Administration Region Director for the area where the port is located.

(d) The Federal Port Controller or Region Director may require the applicant to submit reasonable proof of statements made in support of the application, and may make such investigation as may be necessary for proper disposition of the application. The Federal Port Controller or Region Director shall not be required to make any disposition of the application unless and until such reasonable proof has been submitted: *Provided*, That the disposition of any such application by the Federal Port Controller or Region Director shall not be delayed for more than 60 days from the date of the filing thereof for the purpose of completing any such investigation.

(e) The Federal Port Controller, or Maritime Administration's Region Director or Area Officer may approve the application in whole or in part when the action covered by the application to the extent approved, is in the interests of the war effort, national defense, or the maintenance of the essential civilian economy.

(f) Any applicant aggrieved by the action of the Federal Port Controller or Region Director in disapproving in whole or in part his application may request, in writing, that such action be reviewed by the Director, NSA. The written request shall contain a statement of reasons why the decision of the Federal Port Controller should be reversed or modified. The Director, NSA, or a designee, will review the application on the record made before the Federal Port Controller and will dispose of the application on its merits in accordance with the standards set forth above.

Sec. 7. Exemptions.

The provisions of this part shall not apply to any port facility owned by, or organic to, any agency or department of the United States as of the effective date of this order.

Sec. 8. Applicability.

This part shall apply to the States of the United States, Puerto Rico, and the Virgin Islands.

Sec. 9. Communications.

Communications concerning this part should refer to 32A CFR Part 1901 and should be addressed to the Maritime Administrator, Department of Transportation, Department of Transportation, Washington, DC 20590.

PART 346—FEDERAL PORT CONTROLLERS

Sec.

1. Purpose.
2. Definitions.
3. Standby agreements.
4. Service agreements.

Authority: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et seq.); Reorganization plans No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, 3 CFR 1966-1970 Comp., p. 820) and EO 11921 (41 FR 24294, 3 CFR 1976 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

Sec. 1. Purpose.

This part prescribes the standard form of the service agreement to be entered into by the United States of America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, U.S. Department of Transportation, with State or municipal port authorities or, private corporations, covering the appointment of individuals within their organizations as Federal Port Controllers, and providing the required supporting staff and resources.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980]

Sec. 2. Definitions.

(a) "Federal control of use of port facilities" means the exercise of jurisdiction over the use of port facilities, as defined in section 1(e) of 32A CFR Part 1901, equipment and services (other than port facilities, equipment and services owned by, or organic to any agency or department of the United States) in time of emergency to meet the needs of the national defense and maintain the essential civilian economy.

(b) "Federal Port Controller" means a person designated as such under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the use of port facilities of a designated port or group of ports in time of war or national emergency.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36709, July 15, 1981]

Sec. 3. Standby agreements.

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis, prior to the declaration of a war or national emergency. In such cases, the contractor accepts the obligation to maintain a qualified incumbent in the position specified in Article 1 of the service agreement and to be prepared to furnish the resources specified in Articles 4 and 5. An agreement executed on a

standby basis shall become operational upon the declaration of war or national emergency. An agreement executed after the declaration of war or national emergency shall be operational upon execution.

[46 FR 36709, July 15, 1981]

Sec. 4. Service agreements.

Contract MA ————

SERVICE AGREEMENT, FEDERAL PORT CONTROLLER

This agreement, made as of ————, 19—, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, and ————, a ————, organized and existing under the laws of ———— (herein called the "Contractor").

WITNESSETH

It is this day mutually agreed between the parties as follows:

Article 1. *Appointment of Federal Port Controller.* The United States appoints the incumbent of the position of ————, an employee of the Contractor, as Federal Port Controller, to serve as the agent of the United States and not as an independent contractor, to exercise delegated authority of the Director, NSA, in the control of port operations in time of national emergency.

Art. 2. *Acceptance of appointment.* (a) The contractor agrees to the appointment and undertakes and promises to maintain a qualified incumbent in the position specified in articles 4 and 5 and otherwise required by the Federal Port Controller and agreed to by the United States. Maintaining the equivalent of such specified positions under any subsequent reorganization of port staff is deemed to be in compliance with this article.

(b) The contractor undertakes and promises to ensure that the Federal Port Controller and agreed supporting staff will be relieved of other staff duties and responsibilities during any period in which the arrangements provided for in this agreement are in effect, to the extent necessary to enable them to exercise diligently the authority delegated by the Director, NSA, in accordance with such directions, orders, or regulations not inconsistent with this agreement as the United States (NSA) has by that time prescribed or may from time to time subsequently prescribe to the satisfaction of the director, NSA.

Art. 3. *Scope of Control.* The Federal Port Controller shall exercise the authorities delegated with respect to port operations in the prescribed area of———— ————.

Art. 4. *Responsibilities and functions of the Federal Port Controller*—(a) *Responsibilities.* The Federal Port Controller, acting as an agent of the United States (NSA), is charged with exercising due diligence to protect the interests of the United States in support of any war effort or declared national emergency including maintenance of the essential civilian economy and be responsible for insuring the efficient and effective utilization of the port in accordance with such directions, orders, regulations, supervision, and inspections as the United States (NSA) may prescribe (or in the absence of such directions, orders, forms, and methods of supervision and inspection, in accordance with customary commercial practice). Responsibilities generally include:

(1) Formulation of port coordination and support policy and assurance of adherence thereto:

(2) Expediting of ship turnaround and prevention of congestion of ships and cargo in port;

(3) Correlation of arrangements for rapid clearance and rapid transit of commodities through the port;

(4) Correlation of arrangements for berthing ships and their loading and discharging.

(5) Provision through port control agency channels, of advice on daily port capacities and workload; and

(6) Disposition of frustrated cargo to prevent reduction of port capacity.

(b) *Functions.* Subject to the direction and control of the NSA, in accordance with such policies, programs, allocations, and priorities as may be adopted or established, the Federal Port Controller will:

(1) Furnish the NSA necessary information based upon the local situation and conditions, for establishment by the NSA, of periodic maximum quotas of cargo ocean lift for the port. As appropriate such information shall include but not be limited to estimates of port capacity; the port work load; and availability of berths, vessels, cargoes, labor, and equipment.

(2) Recommend changes of destination of ships or cargo to appropriate representatives of the NSA.

(3) Coordinate port operations to accommodate ships diverted in emergencies by naval authorities.

(4) Coordinate through the Federal agency responsible for land transportation, movement of traffic to and from port areas and, as necessary, exercise controls in coordination with said agency, over the movement of traffic into, within, and out of port areas in accordance with requirements and available port capacity for transshipment.

(5) Administer priorities for the movement of traffic through port areas.

(6) Provide guidance for the coordination of port terminal and forwarding operations; exercise control over the utilization of port facilities, port equipment, and port services, public and private, except those owned by, or organic to any agency or department of the United States and promote maximum efficiency.

(7) Coordinate and make recommendations with respect to the development of port facilities and rehabilitation of substandard port facilities; recommend restoration or replacement of damaged or destroyed port facilities and direct, coordinate and control the activities of Federal, State, local and private agencies in carrying out such restoration or replacement work as may be authorized by proper authority.

(8) Furnish the NSA with pertinent information and data with respect to local port operations in order to assist the NSA in performing its responsibilities at the national level.

(9) Handle "claimant" requests and problems arising at the local level within authorities delegated by the NSA.

(10) As directed, furnish current information to the Federal agency responsible for land transportation in order that it may approve and issue block releases for port bound traffic to the Department of Defense with respect to military traffic and to the NSA with respect to all other oceangoing traffic, in accordance with firm cargo ocean lift schedules for the port. Shipper agencies may provide individual permits to shippers and depots for specific movements to the port areas. Advise the Federal agency responsible for land transportation where circumstances warrant institution of control by the latter agency over traffic-bound inland from the port area in order to minimize congestion in the port.

Art. 5. *Federal Port Controller staff.* The contractor shall provide, in support of the Federal Port Controller, the staff personnel necessary to coordinate actions to overcome any constraints on the effective and efficient conduct of port operations as well as clerical staff to meet the administrative requirements of the Federal Port Controller. The numbers of staff will be determined and agreed to from time to time by the United States (NSA) and the contractor and entered in schedule A attached to this service agreement.

Art. 6. *Office Facilities.* The contractor shall provide or arrange for necessary office facilities for the Federal Port Controller activity, including office space, furniture, communications equipment, supplies, utilities, transportation, and other normal administrative support and support services, as necessary and agreed to from time to time by the United States (NSA) and the contractor and recorded in schedule B attached to this service agreement.

Art. 7. *Compensation.* (a) At least once a month, the United States (NSA) shall pay to the contractor compensation for the Federal Port Controller's services, the costs of his organization, and the costs of office facilities, administrative support services, as follows:

(1) Compensation for services of the Federal Port Controller and his staff shall be in accordance with salary levels plus monetary items directly related thereto (employee service expenses) in force at the time this agreement comes into force: *Provided,* That subsequent cost of living increases authorized under labor agreements and in accordance with Federal or State regulations will apply: *And provided,* That part-time services will be compensated for on a prorated basis. Any adjustments in compensation after the contract comes into force will be negotiated, if appropriate. Employee service expenses will include the employer contributions for social security and pensions, as well as life/health and workmen's compensation insurance.

(2) Compensation for support other than salaries and related expenses (see art. 6) shall be in accordance with published schedules of charges of the contractor; and if schedules of charges have not been published by the contractor, in such fair and reasonable amount as the United States shall from time to time determine and publish in addendums to this service agreement: *Provided,* That, when facilities and support services are shared by the Federal Port Controller and other agencies and activities compensation shall be prorated on a schedule acceptable to the United States and the contractor.

(b) The contractor shall also be entitled to payment or credit for any service, loss, cost, or expense, whether or not specifically provided for or excepted herein, if, and to the extent that such payment or credit is determined within the sole discretion of the Director, NSA, to be fair and equitable and in accordance with the basic principles or intent of this agreement.

Art. 8. *Warranty against contingent fees.* The contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage, or contingent fee.

Art. 9. *Equal opportunity.* During the performance of this agreement, the contractor agrees that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to insure that all action related to employment is taken without regard to race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, employment, promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

Art. 10. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation as an attorney, agent, officer, or director.

Art. 11. *Right of Comptroller General to Examine Books and Records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of the contractor related to this agreement.

Art. 12. *Effective Date, Implementation, Duration and Termination.* (a) This agreement is effective as of the day and year set forth above.

(b) (1) If entered into on a standby basis, this agreement shall be operational as of the day and year when the United States notifies the contractor that the services specified in this agreement are required during a period of war or national emergency, *Provided* that during the standby period, the contractor will carry out the obligation specified in paragraph (a) of Article 2. No compensation will accrue to the contractor during the standby period.

(2) If entered into during a period of war or national emergency, this agreement shall be operational when executed.

(c) Unless sooner terminated, the agreement shall extend until 6 months after termination of the emergency.

(d) This agreement may be terminated upon thirty (30) days' written notice by either party to the other party hereto: *Provided, however,* That, notwithstanding any such termination, the contractor shall, at the option of the United States, continue to be responsible for the completion of any work which the contractor is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any liability or obligation that may have accrued prior thereto.

(e) This agreement may be amended modified or supplemented in writing at an time by mutual consent of the partie hereto. This agreement may not be amended, modified or supplemented otherwis than in writing.

Art. 13. *Renegotiation.* This contract shal be deemed to contain all the provisions required by section 104 of the Renegotiatio Act of 1951.

Art. 14. *Headnotes.* The use of headnote at the beginning of the articles of thi agreement is for the purpose of descriptio only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

In witness whereof, the parties hereto have executed this agreement in triplicate as of this —— day of —, 19—.

UNITED STATES OF AMERICA, DEPARTMENT OF
COMMERCE, MARITIME ADMINISTRATION

(Seal)
Attest:

Secretary ————
Director, National Shipping Authority ——
(Corporate Seal)
Attest:
Secretary ————

By: ————————————————

Approved as to Form:
General Counsel ————, Maritime Administration.

PART 1902. FEDERAL PORT CONTROLLE

Schedule A
Agreed positions.
Schedule B
Agreed office facilities, furniture and support resources.

[44 FR 9382, Feb. 13, 1979. Redesignated a 45 FR 44587, July 1, 1980, and amended a 46 FR 36710, July 15, 1981]

PART 347—OPERATING CONTRACT

Sec.
1. Purpose.
2. Stand-by agreements.
3. Terminal operating contract.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et. seq.); Reorganization Plan No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, CFR 1966-1970 Comp. p. 820) and EO 11921 (41 FR 2494, 3 CFR

1978 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

SOURCE: 44 FR 9384, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Section 1. Purpose.

This part prescribes the standard form of marine terminal contract to be entered into by the United States of America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, U.S. Department of Transportation, with State or municipal authorities or private terminal operators, for the provision of terminal operating services during civil defense emergencies or national emergencies declared by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

Sec. 2. Stand-by agreements.

The Director NSA, Maritime Administration, in advance of an emergency, may negotiate the standard form of terminal operating contract specified in Section 3, with terminal operators on a stand-by basis. Stand-by arrangements establish the framework of rapid initiation of government shipping operations at the outset of an emergency.

At port facilities, (as defined in section 1(e) of 32A CFR Part 1901) under the control of the Maritime Administration and allocated for long term exclusive use by the Department of Defense (DOD), provisions will ordinarily be made for the use of contractors under DOD contracts to move DOD cargo through selected ports, to perform such services as pre-stowing, receipt, intransit storage and loading of cargo under DOD procedures for the Defense Transportation System. When it becomes necessary to move DOD cargo through marine terminals under the control of the Maritime Administration, but not allocated for long term exclusive use by DOD, contractors will be required to perform such services as DOD requires for handling cargo and documenting shipments under the Defense Transportation System, with corresponding contractual obligations.

Sec. 3. Terminal operating contract.

Contract MA ————————————

TERMINAL OPERATING CONTRACT

This agreement, made as of ———, 19—, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, Department of Transportation, and ———— ————, a ——— organized and existing under the laws of ——— (herein called the "operator").

WITNESSETH

That in consideration of the covenants and agreements of the parties hereinafter contained and set forth, the parties here to do mutually covenant and agree as follows: Part. 1.

Article 1. *Relationship of parties.* (a) The United States engages the operator as an independent contractor to do and perform or arrange for the performance of all the customary duties and functions of a terminal operator, subject to the terms, covenants and conditions of this agreement and to such rules, regulations and orders as may be issued by the United States from time to time, with respect to such cargo and vessels as the United States may from time to time direct or designate, and at the following terminals: ————, more specifically described in Schedule A hereto attached and made a part hereof by reference, and at such other terminals as the United States may from time to time designate, which the operator may use under temporary assignment in order to expedite the loading and discharging of vessels under jurisdiction of the NSA.

(b) The operator hereby accepts such engagement and agrees to do and perform all the work required by it to be performed under this agreement in an economical and efficient manner and in accordance with the best operating practices, to exercise due diligence to protect and safeguard the interests of the United States in all respects and seek to avoid any delay, loss or damage whatsoever to United States shipping. The operator represents and warrants that it is the ———— of the herein before specified terminals.

Art. 2. *Compensation.* (a) As full and complete compensation for the work done and performed by the operator, the United States agrees to pay to the operator, as soon as practicable after the completion of each calendar month's work under the provisions of this agreement the following:

(1) For terminal services, an amount calculated on the basis of rates and charges contained in tariffs on file with the Federal Maritime Commission during the time this

agreement is in effect: *Provided, however,* That the operator will be compensated, as a minimum, the amount per month set forth for each terminal in schedule A attached: *And provided further,* That, when the operator, with the approval of the Director, NSA, utilizes the terminal for cargo not controlled by the Director, NSA (that is, for commercial cargo), the compensation received by the operator for handling such cargo shall apply against the minimum compensation; and

(2) For stevedoring services provided or arranged for by the operator and any related contractual services not specified in the terminal tariff such as handling lines or additional lashing or carpentry required for proper stowage or discharge activities, reimbursement for all direct costs of labor as well as those directly related or allocable to the provision of such labor and employee service expenses and costs of materials and equipment, an allowance of 15 percent for GAE is authorized except for those items which are ordinarily provided by the contractor and the basis for charges for which already includes GAE.

(3) An additional amount in payment or credit for any service, loss, cost of expense, whether or not specifically provided for or excepted herein; if, and to the extent that, such payment or credit is found by the Director, NSA, or his designated agent, in his sole discretion, to be fair and equitable and in accordance with the basic principles or intent of this agreement.

(b) Monies due and owing to the operator shall be paid to it only upon the submission of vouchers properly and duly supported and certified. All such vouchers under this agreement shall refer to the date and number of this agreement.

(c) In the event a voucher submitted for payment for the work, or any portion thereof, is not properly supported or certified, the United States may nevertheless make partial payment thereof or payments on account of such voucher as has been properly supported or certified. Such partial payment or payments on account shall not be deemed or held to be a waiver of the right of the United States to revise or adjust such partial payment or payments on account upon the basis of any data or information later received or submitted by the operator.

(d) No payment will be made for handling ship stores or providing services properly billed under vessel contracts or agency agreements related to vessel operations and repairs.

Art. 3. *Effective Date, Implementation, Duration and Termination*

(a) This agreement is effective as of the day and year set forth above.

(b) (1) If entered into on a standby basis, this agreement shall be operational as of the day and year when the United States notifies the contractor that the services specified in this agreement are required during a period of war or national emergency: *Provided,* That during the standby period, the contractor will carry out the obligation specified in paragraph (a) of Article 2. No compensation will accrue to the contractor during the standby period.

(2) If entered into during a period of war or national emergency, this agreement shall be operational when executed.

(c) Unless sooner terminated, this agreement shall extend until 6 months after the termination of the emergency.

(d) This agreement may be terminated upon thirty (30) days' written notice by either party to the other party hereto: *Provided, however,* That, notwithstanding any such termination, the operator shall, at the option of the United States, continue to be responsible for the completion of any work which the operator is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any party of any liability or obligation that may have accrued prior thereto.

(e) This agreement may be amended, modified or supplemented in writing at any time by mutual consent of the parties hereto. This agreement may not be amended, modified or supplemented otherwise than in writing.

Art. 4. *Contract documents.* This agreement consists of part I, part II, and schedule A (the latter being hereto attached and made a part hereof by reference) and such other schedules or writing as may be made by the parties in accordance with the provisions of this agreement. Each and every one of the provisions of said part II, schedules and writings are part of this agreement as though hereinbefore set out at length.

In witness whereof, the parties hereto have duly executed this agreement in triplicate as of the day and year first above written.

(Seal)
Attest:

UNITED STATES OF AMERICA, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

Secretary ———, Maritime Administration.
By: ————————
Director, National Shipping Authority ——
(Corporate Seal)
Attest:

Secretary ———
Approved as to Form:

By: ————————
General Counsel ———, Maritime Administration.

TERMINAL OPERATING CONTRACT

PART II.

Article 1. *Definitions*. (a) "Cargo" as used in this agreement means all general freight and commodities in bulk (including those damaged or solidified), merchandise, material, mail, baggage, express, ship's and subsistence stores, explosives, petroleum products, petroleum and other similar liquid cargo.

(b) "Terminal Work" as used in this agreement means the operation of the terminals specified in schedule A, as terminals and not for any other purpose, including the handling, receiving, delivering, assembling, checking, sorting, storing, coopering, protecting, and shifting of cargo at the said terminals; stowing and snugging cargo in the space on the terminal; issuing and receiving proper receipts for cargo; loading and discharging boxcars, lighters, scows, barges, carfloats, containers, trailers, and chasis; handling vessel's lines on docking and undocking; doing maintenance, and repair in accordance with the terms of this agreement; any and all other services, operations and functions usually or customarily done or performed by a terminal operator; and any and all other duties, services, operations or functions required by the terms of this agreement to be done or performed by the operator.

(c) "Port Terminal Facilities" as used in this agreement means piers, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk loading and/or unloading structures, landings and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

Art. 2. *Duties of the operator*. The operator shall:

(a) If lessee or licensee of the terminals, perform, comply with and abide by all applicable terms, covenants and conditions of the lease or license under which it occupies and uses said terminals;

(b) Make available and operate for the requirements of the United States (which requirements include all cargo and vessels designated by the NSA, whether or not owned by the United States all terminals hereinabove described;

(c) Perform the terminal work as defined and furnish all labor of every nature and description and furnish and use all gear and mechanical devices or other equipment necessary for the most efficient performance;

(d) When requested to do so by the NSA or when incident to its terminal operations, perform or arrange for the shifting of lighters, barges, scows, rail cars and/or carfloats and load and discharge the same;

(e) Insure that the terminals are maintained and kept in proper condition and all berths suitably dredged;

(f) Supply all telephone service, clerical work, light, heat, power, fuel, water and other supplies and services connected with or incidental to the work, within the limits imposed by national resource allocation and priorities systems in effect at the time.

(g) Insure that sub-contractors engaged are experienced and competent to perform adequately in their respective functional field, e.g., handling lines; directing tug operations for docking vessels; planning and conducting cargo stowage with ship or quayside gear and fully complying with all documentation requirements and safety, health and sanitation regulations.

Art. 3. *General labor and other provisions*. (a) The operator shall comply with the Social Security Act, the unemployment insurance laws of any State in which work is done, and the provisions of applicable collective bargaining agreements.

(b) The operator recognizes the relation of trust and confidence established between it and the United States by this agreement, and agrees to furnish its best skill and judgment in planning, supervising and performing the work, to make every effort to complete the work in the shortest time practicable, and to cooperate fully with the United States in furthering the interests of the United States. The operator agrees to furnish efficient business administration and superintendence in performing the work.

(c) Upon the execution of this agreement the operator shall immediately furnish to the Regional Office, NSA, written schedules of the wages and contractual working conditions, (including overtime, pay, insurance benefits and other compensation and employment benefits) payable by the operator in performing the work, and whenever requested from time to time thereafter, the operator shall furnish similar written schedules to the Regional Office, NSA, covering the then existing conditions. The operator shall notify the NSA concerning any proposed or actual change, modifications or alteration in such schedules as soon as knowledge thereof is available to the operator.

(d) The operator shall, if required by the NSA, employ identification cards with individual photograph affixed, or other methods of identification, as issued by the United States Coast Guard or other responsible Government authorities.

(e) Overtime work under this agreement shall be incurred or performed by the operator only when required. However, the operator whenever requested by the NSA, shall work overtime.

Art. 4. *Notice of labor disputes*. Whenever any actual potential labor dispute is delaying or threatens to delay the timely and efficient performance of the work, the operator will immediately give written notice thereof to the NSA.

Art. 5. *Liability of the operator.* (a) While performing the work, the operator shall, except as provided in paragraph 6(c) of part II hereof, be responsible for any and all loss, damage or injury, including death to persons, cargo, vessels, their stores, apparel or equipment, wharves, docks, piers, lighters, elevators, cars, carfloats or other property or thing, arising through the negligence or fault of the operator, its employees or terminals: *Provided,* That, to the extent not covered by insurance, the operator shall not be responsible to the NSA, for any loss, damage or injury resulting from the negligence or wrongful acts of the NSA; or from acts of the operator and its employees performed only because specifically so directed by the NSA; or from defects or other gear supplied by the United States.

(b) The operator shall be under no liability to the United States in the event that the operator should fail to perform any work hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the operator, whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

Art. 6. *Insurance requirements and indemnification.* (a) The operator shall procure, and maintain during the term of this agreement, pay for one or more policies of insurance insuring it as follows, as the basis for calculating compensation payable under paragraph 5(a) above:

(1) Coverage of all piers, wharves, buildings, structures, facilities and equipment, as owner or in accordance with terms of lease.

(2) Standard workman's compensation insurance and employer's liability insurance, including longshoremen and harbor worker's compensation insurance, or such of these as may be proper under applicable State or Federal statutes. Such insurance shall, unless otherwise required by applicable State or Federal statutes, be subject to $50,000/100,000 limits and shall be full coverage with occupational disease endorsement. The operator may, however, be a self-insurer against the risks in this subparagraph, if it has obtained the prior approval of the Director, NSA, such approval to be given upon the submission of satisfactory evidence that the operator has duly qualified as a self-insurer under applicable provisions of law.

(3) Public liability insurance with limits of at least $1,000,000 for the death or bodily injuries to one person and at least $5,000,000 for the death or bodily injuries to more than one person in any one accident or occurrence.

(4) Property damage liability insurance covering damage to or loss of property resulting from the negligence of the operator with a limit of $1,000,000 for each occurrence.

(b) All liability insurance obtained by the operator as provided in paragraph (a)(3) of this section above shall name the United States as additional insured or provided for a waiver or subrogation.

(c) The operator's work is incident to war activities of the United States and will involve risks and hazards far in excess of those normally incident to peacetime commercial operations. To induce the operator to undertake the performance of the work for the compensation herein provided, and thus obtain for the United States the resulting benefit of such reduced compensation, the United States undertakes to and does indemnify the operator and hold it harmless against any loss or damage to the terminals (whether owned, leased or occupied under license) and against expense (including expense of litigation), liability to and claims of third persons because of loss, damage or injury to persons, cargo, vessels, their stores, apparel or equipment, wharves, piers, docks, lighters, barges, scows, elevators, rail cars, carfloats, or other property or thing, arising through the negligence or fault of the operator, its employees, gear or equipment, or otherwise, all subject, however, to the following conditions and limitations:

(1) The undertaking of the United States shall be applicable only and limited to:

(a) For public liability the amount such loss, expense, or liability arising from any single catastrophe, accident or occurrence exceeds the sum of $1,000,000 each person and $5,000,000 per accident or the sum of insurance approved or required to be carried in excess of these limits, whichever sum is greater and

(b) For property damage liability the amount such loss, expense or liability arising from any single catastrophe, accident or occurrence exceeds the sum of $1,000,000 per accident or the sum of insurance approved or required to be carried in excess of these limits whichever sum is greater.

(2) The undertaking of the United States shall not be applicable and the United States shall have no obligation or liability in respect of such undertaking or otherwise, in situations in which such loss, expense or liability is due in whole or in part to willful and deliberate disregard of instructions of the Administrator or the personal failure to exercise good faith or insofar as the character of the work permits under wartime operations that degree of care normally exercised under like conditions in the perform-

ance of the operator's peacetime commercial operations, by the elected corporate officers of the operator or by the representative of the operator having supervision and direction of all operations at any terminal where the operator may perform services hereunder.

(3) As soon as practicable after occurrence of any event from which the obligation of the United States to hold the operator harmless against loss, expense and liability might arise, written notice of such event shall be given by the operator to the United States, which notice shall contain full particulars of the event. If claim is made or suit is brought thereafter against the operator as a result or because of such event, the operator shall immediately deliver to the United States every demand, notice, summons or other process received by it or its representatives, and the United States shall provide appropriate attachment or appeal bonds or undertakings where required in the course of such litigation.

(4) The operator shall cooperate with the United States and, upon the request of the United States, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct (including defense) of suits; and the United States shall reimburse the operator for reasonable out-of-pocket expenses, other than loss of earnings, incurred in so doing. The operator shall not voluntarily, except at its own cost, make any payment, assume any obligation or incur any expense, other than for such immediate medical and surgical relief to others as shall be imperative at the time of said occurrence of such event.

(5) This undertaking of the United States to hold the operator harmless against loss, expense and liability as herein provided, shall not create or give rise to any right, privilege or power in any person or organization, except the operator, nor shall any person or organization be or become entitled to join the United States as a co-defendent in any action against the operator brought to determine the operator's liability or for any other purpose; *Provided, however*, That as to any risk borne or assumed by the United States through the undertaking set above, the United States shall be and hereby is subrogated by the operator to any claim, demand or cause of action against third persons or organizations which exists or may arise in favor of the operator, and the operator shall, if so required, forthwith execute a formal assignment or transfer of such claim, demand or cause of action.

(6) This undertaking of the United States shall not apply against any loss or expense resulting from enemy attack upon the United States.

Art. 7. *Covenant against assignment or sublease of terminals.* The operator shall not assign or sublet the terminals or any portion thereof nor grant any license with respect thereto, except in the ordinary course of terminal operations and subject to the approval of the NSA.

Art. 8. *Custom of the port.* No rule or custom of the port in conflict with any provision or term of this agreement will be binding upon the United States, unless the operator is legally obligated to comply with the same pursuant to the laws of the United States or laws of any State thereof or pursuant to the terms, provisions, covenants and conditions of any lease covering the terminals and entered into between the operator and its lessor or licensor thereof.

Art. 9. *Extra work.* The United States will neither compensate nor make any payments to the operator for any extra work in connection with the operation of terminals which it may render in addition to the work specifically required by this agreement, except as provided in paragraph 3(e) of part II hereof.

Art. 10. *Status of employees.* All employees of the operator or of any other person or organization employed in performance of the work shall at all times be the employees of the operator or of such other person or organization, as the case may be, and are not employees of the United States.

Art. 11. *Delegation of authority.* Wherever and whenever any right, power or authority herein is granted or given to the United States, such right, power or authority may be exercised by the NSA or such agent or agents as the United States may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the United States hereunder. In performing the work, the operator may rely upon the instructions and directions of the Director, NSA, his officers and responsible employees, or any person or agency authorized by him. Whenever practicable, instructions and directions to the operator shall be in writing and oral instructions or directions given shall be confirmed promptly in writing. No Director's orders or regulations shall have retroactive effect without the written consent of the General Counsel, Maritime Administration.

Art. 12. *Warranty against contingent fees.* The operator warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage, or contingent fee.

Art. 13. *Equal opportunity.* During the performance of this agreement, the operator agrees as follows:

(a) The operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to insure that all action related to employment is taken without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, employment, promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

(b) The operator will, in all solicitations or advertisements for employees placed by or on behalf of the operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

(c) The operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the NSA, advising the labor union or worker's representative of the operator's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The operator will compy with all provisions of Executive Order No. 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor.

(e) The operator will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the NSA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the operator's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part, and the operator may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The operator will include the provisions of this paragraph in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The operator will take such action with respect to any subcontract or purchase order as the NSA may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the operator becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the NSA, the operator may request the United States to enter into such litigation to protect the interests of the United States.

Art. 14. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

Art. 15. *Right of Controller General to examine books and records.* The Controller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the operator or any of its subcontractors engaged in the performance of the work under this agreement.

Art. 16. *Renegotiation.* This agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951. The operator shall, in compliance with said section 104, insert the provisions of this paragraph in each subcontract and purchase order made or issued in carrying out this agreement.

Art. 17. *Headnotes.* The use of headnotes at the beginning of the articles of this agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

SCHEDULE A—TERMINAL OPERATING CONTRACT

Description of Terminal(s) and the agreed minimum dollars per month for each.

[44 FR 9384, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36710, July 15, 1981]

SUBCHAPTER J—MISCELLANEOUS

PART 350—SEAMEN'S SERVICE AWARDS

Sec.
350.1 Purpose.
350.2 Korean Service Bar.
350.3 Vietnam Service Bar.
350.4 Procedure for purchase.
350.5 Replacements.
350.6 Unauthorized sale.

AUTHORITY: Pub. L. 84-759, 70 Stat. 605, Dept. of Commerce Order 10-8 (38 FR 19707, July 23, 1973), Administrator's Order 1 (amended) (Nov. 27, 1972).

SOURCE: General Order 81, Rev., 38 FR 27525, Oct. 4, 1973, unless otherwise noted.

§ 350.1 Purpose.

The purpose of this part is to prescribe regulations pursuant to Pub. L. 84-759, 70 Stat. 605, governing the issuance of service ribbon bars to masters, officers, and crew members of United States ships in recognition of their service in areas of danger during the operations by Armed Forces of the United States in Korea and Vietnam, and the replacement of awards previously issued for service in the United States Merchant Marine during World War II, under earlier Acts of Congress and Executive Orders, now repealed.

§ 350.2 Korean Service Bar.

A red, white, and blue umbra silk ribbon bar, one and three-eighths inches wide by three-eighths inch long, may be issued, in accordance with the procedure set forth in § 350.4, to each master, officer or member of the crew of any United States ship who, between June 30, 1950 and September 30, 1953, served in the waters adjacent to Korea within the following bounds:

From a point at latitude 39°30′ N., longitude 122°45′ E.; southward to latitude 33° N., longitude 122°45′ E.; thence eastward to latitude 33° N., longitude 127°55′ E.; thence northeastward to latitude 37°05′ N., longitude 133° E., thence northward to latitude 40°40′ N., longitude 133° E., thence northeastward to a point on the east coast of Korea at the juncture of Korea with the U.S.S.R.

(46 U.S.C. 249 et seq.)

[G.O. 81, Rev., 38 FR 27525, Oct. 4, 1973, as amended at 43 FR 1943, Jan. 13, 1978]

§ 350.3 Vietnam Service Bar.

A red, blue and yellow silk ribbon bar, one and three-eighths inches wide by three-eighths inch long, may be issued, in accordance with the procedure set forth in § 350.4, to each master, officer, or member of the crew of any United States ship who, between July 4, 1965, and August 15, 1973, served in the waters adjacent to Vietnam within the following bounds:

From a point on the east coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N. Lat., 108° E. Long.; thence southeast to 18° N. Lat., 108° E. Long.; thence southeastward to 17°30′ N. Lat., 111° E. Long.; thence southward to 11° N. Lat., 111° E. Long.; thence southeastward to 7° N. Lat., 105° E. Long.; thence westward to 7° N. Lat., 103° E. Long.; thence northward to 9°30′ N. Lat., 103° E. Long.; thence northeastward to 10° N. Lat., 104°27′ E. Long.; thence northward to a point on the west coast of Vietnam at the juncture with Cambodia.

§ 350.4 Procedure for purchase.

(a) Application for the Korean Service Bar and Vietnam Service Bar shall be made to the Office of Maritime Manpower, Maritime Administration, Department of Transportation, Washington, DC 20590. The application should include the seaman's complete name, mailing address, Book or "Z" number, the name or names of ships on which the seaman served, and dates of service. If found to be eligible, a certification card will be supplied to the applicant.

(b) The Korean Service Bar, Vietnam Service Bar or a replacement of a bar described in § 350.5(a)(1) may be purchased from the authorized distributor, A & N Trading Company, 714 12th Street, NW., Washington, DC 20005 at a cost of eighty-five cents, prepaid by check or money order, payable to the vendor. Certification cards need not be presented to the authorized vendor in order to purchase the boards. However, the wearing of any Merchant Marine decoration by other than authorized personnel is prohibited by law.

(46 U.S.C. 249 et seq.)

[G.O. 81, Rev., 38 FR 27525, Oct. 4, 1973, as amended at 43 FR 1943, Jan. 13, 1978]

§ 350.5 Replacements.

(a) (1) The following may be replaced if the bar is lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the owner:

(i) Korean Service Bar.

(ii) Vietnam Service Bar.

(iii) Ribbon bars, previously issued for service in the United States Merchant Marine during World War II, pursuant to earlier Acts of Congress and Executive Orders, now repealed. The ribbon bars include the following:

(A) Atlantic War Zone Bar.

(B) Pacific War Zone Bar.

(C) Mediterranean—Middle East War Zone Bar.

(D) Combat Bar.

(E) Defense Bar.

(F) Victory Medal Bar.

(2) The procedure set forth in § 350.4 (b) is to be complied with when purchasing a replacement.

(b) The following decorations may be replaced at cost upon application to the Office of Maritime Manpower, Maritime Administration, Department of Transportation, Washington, DC 20590.

(1) Distinguished Service Medal.

(2) Meritorious Service Medal.

(3) Mariner's Medal.

(4) Victory Medal.

(5) Merchant Marine Medal.

(6) Honorable Service Button.

(7) Presidential Testimonial Letter.

(c) If certification cards are lost or destroyed, replacements may be obtained upon application to the Office of Maritime Manpower, Maritime Administration, Department of Transportation, Washington, DC 20590.

(49 U.S.C. 249 et seq.)

[G.O. 81, Rev., 38 FR 27525, Oct. 4, 1973, as amended at 43 FR 1943, Jan 13, 1978]

§ 350.6 Unauthorized sale.

The sale of any Merchant Marine decorations by anyone other than an authorized distributor is prohibited by law.

PART 351—DEPOSITORIES

Sec.

351.1 Purpose.
351.2 Qualification of depository.

§ 351.1 Purpose.

The purpose of this part is to set forth the criteria necessary for depositories of funds under all programs authorized by the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.) (Act).

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[38 FR 8061, Mar. 28, 1973]

§ 351.2 Qualifications of depository.

(a) *General qualification.* Any depository which is a member of the Federal Deposit Insurance Corporation will be approved for deposit of funds under the maritime programs authorized by the Act.

(b) *Limitation on amount of deposits.* No person making deposits under the programs authorized by the Act shall make or maintain deposits which exceed 5 percent of the depository's total deposits.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[38 FR 8061, Mar. 28, 1973]

PART 355—REQUIREMENTS FOR ESTABLISHING UNITED STATES CITIZENSHIP

Sec.

355.1 General.
355.2 Requirements regarding evidence of U.S. citizenship; affidavit guide.
355.3 Criteria to be applied in support of stock data in affidavit.
355.4 Changes in citizenship data.
355.5 Additional material.

AUTHORITY: Secs. 2, 204, 39 Stat. 729, as amended, 49 Stat. 1987, as amended, 73 Stat. 597; 46 U.S.C. 802, 803, 1114, 11.

SOURCE: General Order 89, Rev., 35 FR 11558, July 18, 1970, unless otherwise noted.

§ 355.1 General.

(a) Under section 2, Shipping Act, 1916, as amended and section 905(c), Merchant Marine Act, 1936, as amended, no corporation is deemed to be a citizen of the United States unless (1) it is organized under the laws of the United States or of a State, Territory, District, or possession thereof; (2) its president or other chief executive officer, and the chairman of its board of directors are citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens (except that in the case of corporations under title VI, Merchant Marine Act, 1936, as amended, all directors must be citizens of the United States) and (3) the controlling interest therein is owned by citizens of the United States or, in the case of a corporation operating any vessel in the coastwise trade, on the Great Lakes, or inland lakes of the United States, 75 per centum of the interest in such corporation is owned by citizens of the United States.

(b) As used in this regulation, the term "primary corporation" includes, but not exclusively, an applicant, for, or one already receiving, benefits under the Merchant Marine Act, 1936, as amended, as well as participants in certain transactions, such as banking institutions designated as lenders, mortgagees, and trustees pursuant to Pub. L. 89-346 (73 Stat. 597).

(c) To satisfy the statutory requirements, an Affidavit of U.S. Citizenship of a primary corporation by one of its officers duly authorized to execute such Affidavit, should be submitted. This affidavit should contain facts from which the corporation's citizenship can be determined.

§ 355.2 Requirements regarding evidence of U.S. citizenship; affidavit guide.

(a) In order to establish that a corporation is a citizen of the United States within the meaning of section 2, Shipping Act, 1916, as amended, the form of affidavit to be used as a guide is hereby prescribed for execution in behalf of the primary corporation and filing with an application or, if required, subsequent filing within 30 days after the annual meeting of the stockholders (if the primary corporation is a wholly owned subsidiary and contrary to the bylaw provision does not hold the annual meeting of stockholders, the subsequent filing should be annually and related to the date of the original filing) as evidence of the continuing U.S. citizenship of a "person" as defined in section 1, Shipping Act, 1916, as amended, which shall read as follows:

AFFIDAVIT OF U.S. CITIZENSHIP

State of ______ County of ______ SS:

I, ______, (Name) of ______, (Residence address) being duly sworn, depose and say:

1. That I am the ______ (Title of office(s) held) of ______, (Name of corporation) a corporation organized and existing under the laws of the State of ______ (hereinafter called the "Corporation"), with offices at ______, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the President or other Chief Executive Officer, Vice Presidents or other individuals who are authorized to act in the absence or disability of the President or other Chief Executive Officer, the Chairman of the Board of Directors, and the Directors of the Corporation are as follows:

Name	*Title*	*Date and place of birth*

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.)

and that each of said individuals is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of alien directors, if any); however, the Bylaws of the Corporation provide that ———— (Number) of the directors are necessary to constitute a quorum; therefore, the alien directors named represent no more than a minority of the number necessary to constitute a quorum. [In the case of corporations under title VI, Merchant Marine Act, 1936, as amended, all directors must be citizens of the United States. Further, obtaining evidence necessary to support this Affidavit of U.S. Citizenship is the responsibility of the affiant.];

4. Information as to stock, where Corporation has 30 or more stockholders: [1]

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of ————, (Date) the Corporation had issued and outstanding ———— (Number) shares of ————, (Class or series) the only class or series of stock of the Corporation issued and outstanding [if such is the case], owned of record by ———— (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class or series. [If different classes or series of stock exist, give the same data for each class or series issued and outstanding, showing the monetary value and voting rights per share in each class or series. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class or series of stock owned should be stated.]

That the registered addresses of —— owners of record of —— shares of the issued and outstanding ———— (Class or series) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said —— shares being —— per centum (——%) of the total number of shares of said stock (each class or series). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum, except that for a corporation operating a vessel in the coastwise trade, the per centum figure must be not less than 95 per centum. These per centum figures apply to corporate stockholders as well as to the primary corporation.]

(The same statement should be made with reference to each class or series of stock, if there is more than one class or series.)

4. Information as to stock, where Corporation has less than 30 stockholders: [1]

That the information as to stock ownership, upon which the Corporation relies to establish that the required percentage[2] of stock ownership is vested in citizens of the United States, is as follows:

Name of stockholder	*Number of shares owned (each class or series)*	*Percentage of shares owned (each class or series)*

and that each of said individual stockholders is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law.

NOTE: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders in the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5 percent or more of any class or series of stock and the beneficial owners thereof should be named and their U.S. citizenship affirmed.

5. That the controlling interest (or 75% of the interest)[3] in (each) said Corporation, as established by the data hereinbefore set forth, is owned by citizens of the United States; that the title to a majority (or 75%)[3] of the stock of (each) said Corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in citizens of the United States; that through no contract or understanding is it so arranged that the majority (or more than 25%)[3] of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is

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[1] Strike inapplicable paragraph 4.

[2] 75% if Corporation is operating in the coastwise trade, on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; and controlling interest if Corporation is operating solely in the foreign trade, both terms as defined in section 2, Shipping Act, 1916, as amended.

[3] Strike inappropriate language.

not a citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation (or any interest in said Corporation in excess of 25%)[3] conferred upon or permitted to be exercised by any person who is not a citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

Dated: ————

————————————
(Name of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid, this —— day of ———19—.

————————————
(Notary Public)

My Commission expires:

————

PENALTY FOR FALSE STATEMENT: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

(Approved by the Office of Management and Budget under control number 2133-0012)

[G.O. 89, Rev., 35 FR 11558, July 18, 1970, as amended at 35 FR 11686, July 22, 1970; 47 FR 25530, June 14, 1982]

§ 355.3 Criteria to be applied in support of stock data in affidavit.

(a) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class or series) in the Affidavit as those observed for the primary corporation. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership (see Collier Advertising Service, Inc. v. Hudson River Day Line, 14 Fed. Supp. 335), the extent of U.S. citizen ownership of stock should be ascertained in the requisite percentage (65 percent for foreign operation and 95 percent for coastwise operation) in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by the Maritime Administration.

(b) When applying the fair inference rule (where there are more than 30 stockholders, except where one or more of such number actually owns the controlling or 75 percent interest) in order to prove U.S. citizen ownership in the required percentages (1) for foreign operation, 65 percent of the shares of stock of each class or series must be shown to be held by persons with registered addresses within the United States to prove that 51 percent or controlling interest is vested in citizens of the United States and (2) for coastwise operation, 95 percent of the shares of stock of each class or series must be shown to be held by persons having registered addresses within the United States to prove that 75 percent of the interest in the corporation is vested in citizens of the United States.

(c) If the primary corporation is consecutively owned by several "parent" corporations (holders of 100 percent of the stock of each or all classes or series of stock issued and outstanding), the facts should be given in proper sequence either by chart or in narrative form, revealing the facts of stock ownership. The information with respect to the ultimate parent should include data relative to the basis upon which controlling or 75 percent (depending upon whether the primary corporation operates in the domestic or foreign commerce) is established, together with the names of the owners of record or beneficial owners of 5 percent or more of each class or series of stock, if more than one class or series, and statement that such owners are citizens of the United States. In any case where different classes or series of stock exist, each class or series shall be treated depending upon whether "closely held" or "publicly held," individually in applying the fair inference rule, if applicable, or giving the relevant information with respect to United States citizens owning of record 51 percent or 75 percent of the interest.

§ 355.4 Changes in citizenship data.

It shall be incumbent upon the parties filing affidavits under this part to apprise the Maritime Administration promptly in writing relative to changes in data last furnished with respect to officers, directors, and stockholders holding 5 percent or more of the issued and outstanding stock of each class or series, together with statements concerning the citizenship status thereof.

§ 355.5 Additional material.

If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the aforementioned primary corporation upon request by the Maritime Administration.

PART 360—TRANSFER OF MARINE EQUIPMENT TO SHIP OPERATORS AND SHIPYARDS

Sec.
360.1 Purpose.
360.2 Definitions.
360.3 Policy.
360.4 Procedure.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 84, 2d Rev., 36 FR 5790, Mar. 27, 1971, unless otherwise noted.

§ 360.1 Purpose.

To set forth the policy and procedures governing the transfer of marine equipment by the Maritime Administration to operators of merchant ships and to shipyards for the construction or repair of merchant ships, on the basis of replacement at the earliest possible date.

§ 360.2 Definitions.

(a) The term "transfer," as used herein, shall be deemed to be a transfer of possession with passage of title upon delivery of the equipment to the operator or shipyard, and with obligation for replacement of the equipment by the transferee.

(b) The terms "marine equipment" and "equipment," as used herein, shall be deemed to include machinery, spare parts, and equipment required for the operation, construction, or repair of merchant ships.

§ 360.3 Policy.

(a) Transfers of marine equipment owned by the Maritime Administration will be made, upon request, only in cases of emergency under the f lowing conditions:

(1) There must be a need whi cannot be filled within a reasonab time by a manufacturer or oth source;

(2) The transferee shall agree stand all costs incurred in connectio with the transfer;

(3) The transferee shall agree take possession and custody of th equipment at a time and place desig nated by the Maritime Administratio and there shall be no liability on th part of the Maritime Administratio for any failure of the equipmen thereafter; and

(4) The equipment transferred shal be replaced by the transferee, at hi expense, at the earliest practicabl date and at a point designated by the Maritime Administration, with new equipment of the same type and design or with equipment determined by the Maritime Administration to be suitable for the same use as the equipment transferred, in a condition sati factory to the Maritime Administration and in compliance with American Bureau of Shipping and U.S. Coast Guard standards.

(b) Transfers which meet the above requirements may be made (1) to operators of U.S.-flag merchant ships and shipyards for the construction or repair of U.S.-flag merchant ships, and (2) to foreign-flag merchant ships and U.S. shipyards for the construction or repair of foreign-flag merchant ships, when it is determined by the Maritime Administration, in consultation with other Government agencies, as appropriate, that the transfer would be beneficial to the American merchant marine, the defense effort, or otherwise in the national interest.

(c) The transferee shall furnish a deposit to the Maritime Administration in the amount of the current acquisition value (new) of the equipment, as determined by the Maritime Administration, plus 10 percent of such amount to cover expenses which may be incurred by the Maritime Administration in connection with the transaction, including possible damages to Maritime Administration properties, and, where applicable, an additional amount equal to the estimated cost of closing any openings or reassembling any machinery made necessary by the transfer. This deposit, less the amount of any expenses or damages incurred by the Maritime Administration in connection with the transfer, will be returned to the transferee upon satisfactory replacement of the equipment.

(d) The transferee shall pay to the Maritime Administration a service charge in the amount of $200 to cover administrative and operating expenses incurred in processing the transfer. This amount is to be deposited to the credit of the Government, and will not be returned to the transferee.

§ 360.4 Procedure.

(a) Requests for the transfer of marine equipment shall be submitted, in writing, to the Chief, Division of Reserve Fleet, Maritime Administration, Washington, DC 20590, or to the appropriate Region Director in the field, and shall include the following information:

(1) Name and address of organization requesting the transfer;

(2) Description of the equipment required;

(3) Time and method of replacement of equipment;

(4) Name, type, and flag of ship involved, port at which installation is to be made, and trade route and type of trade in which ship is engaged; and

(5) A detailed explanation of the need, establishing that an emergency exists and that the equipment cannot be obtained elsewhere in time for the ship to sail on schedule or to continue a voyage.

(b) Upon determination by the Maritime Administration that the justification for the transfer meets the policy requirements of § 360.3 and that the equipment is available for transfer, the authorized transfer official shall obtain from the applicant, in writing, an agreement to the conditions of the transfer, including the conditions set forth in § 360.3 and such other conditions as may be appropriate, including the foregoing definition of the term "transfer."

(c) The transferee shall transmit to the Maritime Administration, Washington, D.C., or the appropriate Region Director a certified or cashier's check payable to "Maritime Adm.-Transportation" in the amount of the required deposit and the service charge, as determined under § 360.3 (c) and (d).

(d) Upon approval of the transfer, the Chief, Division of Supply Management or appropriate Region Director shall authorize the issuance of appropriate shipping and other necessary instructions for the transfer of the equipment to the ship operator or shipyard.

(e) Upon determination that the equipment transferred has been satisfactorily replaced and all conditions of the transfer have been complied with, the Maritime Administration will refund to the transferee the amount of his deposit less such deductions as are determined by the Maritime Administration to be appropriate.

PART 365—OFFICIAL SEAL OF THE MARITIME ADMINISTRATION

Sec.

365.1 Purpose.
365.2 Maritime Administration Seal.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

EFFECTIVE DATE NOTE: At 55 FR 38550, Sept. 19, 1990, part 365 was removed, effective October 19, 1990.

§ 365.1 Purpose.

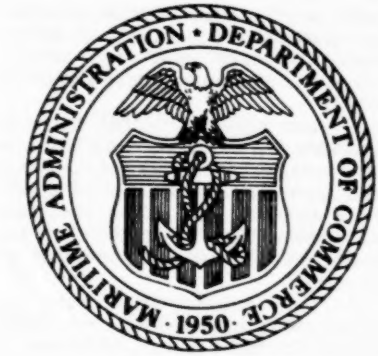
To prescribe and give official notice of the seal of the Maritime Administration.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 90, Amdt. 1, 27 FR 1493, Feb. 17, 1962, as amended at 55 FR 38550, Sept. 19, 1990]

§ 365.2 Maritime Administration Seal.

(a) Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1111(c)), the Maritime Administration hereby prescribes its official seal, as approved by the Secretary of Commerce on December 27, 1950, the design of which is illustrated below and described as follows:


MARITIME ADMINISTRATION • DEPARTMENT OF COMMERCE
1950

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third and surmounted by an eagle displayed with wings inverted proper; all on a gold disc edged blue within a white border, encircled by a gold rope outlined in blue, and bearing the inscription "Maritime Administration Department of Commerce 1950" in blue letters, the words "Administration" and "Department" separated by a blue five pointed star.

(2) The shield and eagle perched on it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1950" has historical significance, indicating the year in which the Maritime Administration was created.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 90, 25 FR 3839, May 3, 1960. Redesignated by Amdt. 1, 27 FR 1493, Feb. 17, 1962; 55 FR 38550, Sept. 19, 1990]

PART 370—CLAIMS

Subpart A—Processing of Time-Barred Claims

Sec.
370.1 Definitions.
370.2 General policy.

Subpart A—Processing of Time-Barred Claims

§ 370.1 Definitions.

(a) "Time-barred claim" means a claim against the Government, for which the statutory period for filing suit has expired.

(b) "Contract" includes every agreement or contract entered into by the Maritime Administrator and/or Maritime Subsidy Board, the Director National Shipping Authority or their delegatee.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 102, 34 FR 6928, Apr. 25, 1969]

§ 370.2 General policy.

(a) Time-barred claims shall be rejected, except as follows:

(1) A time-barred claim which could be asserted in court by way of set-off against a claim in favor of the United States arising out of the same contract may be considered in an overall settlement where settlement will result in a net payment to the United States, provided claimant releases the United States from all claims arising from or in any way connected with said contract.

(2) Time-barred claims in favor of friendly foreign governments shall not be rejected solely because they are time-barred. However, should any such government adopt the practice of asserting the statute of limitations as a defense against claims of the United States, the time-barred claims of that government shall be rejected.

(3) Time-barred claims arising under Second Seamen's War Risk insurance (or similar earlier types of crew insurance) where the policy was issued or the risks were assumed by the Maritime Administration (or its predecessors), shall not be rejected where the beneficiaries were precluded from receiving the proceeds of the policy by reason of regulations or orders of the U.S. Government (i) by reason of the beneficiary being physically or mentally unable to present the claim, (ii) by the beneficiaries being unaware of their entitlement to the proceeds in question, or (iii) where the claim is not

"stale" under general principles of equity.

(b) For the purpose of a claim by a General Agent under General Agency Agreements set forth in 32A CFR AGE-1 for reimbursement by the Maritime Administration on account of a timely payment made to a third party within a period of limitations running from the date the claim of the third party accrued, the period of limitations applicable to the General Agent shall run from the date of such payment. In all other cases involving claims arising under General Agency Agreements, including third-party claims, the policy provided in paragraph (a) of this section shall apply.

(c) Consideration of any claim governed by applicable regulations in this chapter II, including without limitation Parts 272, 292, and 205 of this chapter, shall be controlled by the time limitations expressly provided for with respect to the submission of such claims.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 102, 34 FR 6928, Apr. 25, 1969]

PART 380—PROCEDURES

Subpart A—Filing of Applications Under Section 805(a), 1936 Act

Sec.
380.1 Purpose.
380.2 Filing applications.
380.3 Processing of application.
380.4 Notices; statements from interested parties and arrangements for hearing.
380.5 Exception to procedure.

Subpart B—[Reserved]

Subpart C—Records Retention Schedule

380.20 Purpose.
380.21 Reproduction.
380.22 Responsibility.
380.23 Supervision of records.
380.24 Schedule of retention periods and description of records.

Subpart D—[Reserved]

Subpart E—Compulsory Disclosure

380.40 Subpoenas, other compulsory processes and requests.

Subpart A—Filing of Applications Under Section 805(a), 1936 Act

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 86, Rev., 33 FR 810, Jan. 23, 1968, unless otherwise noted.

§ 380.1 Purpose.

To prescribe procedure to be followed for filing applications submitted to the Maritime Subsidy Board/Maritime Administration pursuant to the provisions of section 805(a), Merchant Marine Act, 1936, as amended.

§ 380.2 Filing applications.

(a) An applicant under section 805(a) shall file his application (16 copies, including three originals) with the Secretary, Maritime Subsidy Board/Maritime Administration at least 15 days in advance of the effective date of the action proposed in the application.

(b) The application shall concisely and clearly reflect:

(1) Whether the applicant holds an operating-differential subsidy contract under title VI of the Act, or has applied for such type contract, or

(2) Whether the applicant has a Government-owned vessel on charter under title VII of the Act or has applied for the charter of a Government-owned vessel thereunder;

(3) The action for which approval of the Maritime Subsidy Board/Maritime Administration is sought, stated in terms of a request for permission to, directly or indirectly, own, operate, or charter a vessel(s) in the domestic intercoastal or coastwise service, or to own a pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel(s) in the domestic intercoastal or coastwise service; and

(4) Whether the operator of the vessel to be engaged in the domestic trade is a citizen of the United States as required by and within the meaning of section 2 of the Shipping Act, 1916.

§ 380.3 Processing of application.

All applications under section 805(a) shall be referred to the Chief, Office of Government Aid, Maritime Administration, for consideration and such further action as may be appropriate.

§ 380.4 Notices; statements from interested parties and arrangements for hearing.

(a) A notice shall be published in the FEDERAL REGISTER which shall:

(1) Identify and abstract the subject of the application.

(2) Provide that interested parties may inspect the proposed application in the Office of Government Aid, Maritime Administration.

(3) Provide for a specific date by which parties having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) shall petition to intervene, or submit a written statement with reference to the application addressed to the Secretary, Maritime Subsidy Board/Maritime Administration.

(4) Provide that if no petitions for leave to intervene are received within the specified time, the Maritime Subsidy Board/Maritime Administration will take such action as may be deemed appropriate.

(5) Provide that in the event petitions are received from parties with standing to be heard on the application, a hearing will be held on a date specified in the notice.

(6) Indicate that the purpose of the hearing will be to receive evidence under section 805(a) relative to whether the proposed operation (i) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or (ii) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

§ 380.5 Exception to procedure.

The Maritime Subsidy Board or the Maritime Administrator may dispense with the publication of notice when not inconsistent with applicable laws.

Subpart B—[Reserved]

Subpart C—Records Retention Schedule

AUTHORITY: Secs. 204, 207, 49 Stat. 1987, as amended, 1988, as amended; 46 U.S.C. 1114, 1117; sec. 801, 49 Stat. 2011, 46 U.S.C. 1211.

§ 380.20 Purpose.

The purpose of this subpart is to prescribe the procedure to be followed by contractors for the retention and disposal of books, records, and accounts created and maintained by them under construction or operating-differential subsidy contracts with the Maritime Administration/Maritime Subsidy Board (hereinafter referred to as the "Administration"). The minimum retention periods prescribed herein govern only the Administration's requirements for the preservation of the hereinafter specified books, records, and accounts. The failure to describe a particular book, record, or account shall not exempt a contractor from retaining the particular book, record, or account, unless expressly so authorized by the Administration.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[48 FR 45560, Oct. 6, 1983]

§ 380.21 Reproduction.

(a) The records described in § 380.24 may be microfilmed or otherwise reproduced in lieu of their retention in original form: *Provided,* That such reproductions shall not be made prior to completion of the audit of such records by the Administration.

(b) The following standards are established for reproduction processes:

(1) *Microfilm.* The film stock used in making photographic or microphotographic copies shall comply with Interim Federal Standard No. 125 covering photographic film and processed photographic film. The microfilm shall be regularly inspected for aging in accordance with Handbook 96, entitled, "Inspection of Processed Photographic Record Films for Aging Blemishes", published by the U.S. Department of Commerce, National Bureau of Standards. If blemishes are detected, a duplicate copy of the roll or print shall be made immediately.

(2) *Photocopy.* Electrostatic or wet processes only.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[G.O. 101, 30 FR 12356, Sept. 28, 1965, as amended at 48 FR 45560, Oct. 6, 1983]

§ 380.22 Responsibility.

(a) Notwithstanding the minimum retention periods hereinafter set forth, it shall be the sole responsibility of any party subject to the provisions of this subpart to retain such books, records, and accounts:

(1) For the periods specifically provided by any statutory, regulatory, and contractual requirements of the Administration, or

(2) Pertaining to or related to matters in litigation, to matters which knowingly may become involved in litigation, to unsettled claims of whatsoever nature, and to all unsettled matters specifically reserved by the parties at the time of any final accounting as may be required under statute, contract and/or agreement.

(b) With respect to books, records, and accounts which, subject to the provision of paragraph (a) of this section, are to be disposed of upon the expiration of the minimum retention period prescribed herein, there shall be filed with the Records Officer, Maritime Administration, Washington, DC, 20590, a written notification, in triplicate, via registered mail at least thirty (30) days prior to the contemplated, disposal requesting permission to dispose of records. The request shall be in such form that the books, records, and accounts can be readily identified. Within thirty (30) days after receipt of such notification the Records Officer shall grant approval for disposal, or advise the necessity for continued retention of all or any specified portion thereof. Failure of the Record Officer to reply within the thirty (30) days period following receipt by the Administration of such request shall constitute approval.

(c) Applications for special authority to dispose of certain books, records, and accounts prior to the expiration of prescribed minimum retention periods, and any inquiries as to the interpretation or applicability of this subpart to specific items shall be submitted to the Records Officer, Maritime Administration. The applicant shall describe in detail the items to be disposed of and explain why continued retention is unnecessary.

[G.O. 101, 30 FR 12356, Sept. 28, 1965]

§ 380.23 Supervision of records.

(a) Contractors and others subject to the provisions of this subpart shall designate, through formal action, the official company position by title, the incumbent of which shall be responsible for supervision of its document retention and disposal program. Immediately upon designation of the position, a copy of the formal action and name of the incumbent shall be filed with the Records Officer, Maritime Administration.

(b) The person in charge of the retention and disposal program shall maintain a record of all books, records, and accounts held in storage, and in such form that the items and their location are readily identifiable. A copy of the written notification requesting permission to dispose of any books, records, and accounts, and the original approval from the Administration, as required in § 380.22(b), together with a statement showing date, place and method of disposal will suffice as a record of such disposed items. These retention and disposal records shall be available at all times for inspection by Administration officials and auditors.

[G.O. 101, 30 FR 12356, Sept. 28, 1965]

§ 380.24 Schedule of retention periods and description of records.

(a) The following records shall be retained for not less than two (2) years after final release agreement or settlement agreement is completed between the Administration and contractors under operating-differential subsidy contracts:

(1) Official company or corporate records such as certificates or articles of incorporation, minute books, stock ledgers, bond registers, merger or acquisition records, patents and copyrights;

(2) Financial statements and reports such as annual reports to stockholders and audit reports by independent public accountants;

(3) Insurance records such as policies, underwriters' audit reports, indemnity bonds, salvage data, and claim files;

(4) Contracts, agreements, franchises, licenses, etc., such as subsidy, charter, ship construction, and pooling agreements;

(5) Vessel operating records such as log books, surveys, position reports, and vessel itineraries;

(6) Voyage account items such as manifests, bills of lading, master's accounts, ship's payrolls;

(7) Underlying traffic records pertaining to tariffs, dray tickets, pooling agreements, passenger reports, freight and passenger conference records.

(b) The following records shall be retained for three (3) years after final audit and/or approval by the Administration:

(1) Ship construction or reconversion records such as bids, plans, progress payments, and construction-differential subsidy data;

(2) Canceled checks;

(3) Miscellaneous documents and work papers such as correspondence, operating and construction differential subsidy rate data, subsidy adjustments pursuant to 46 CFR Part 276 and approvals pursuant to Article II-10(c) of operating-differential subsidy contracts;

(4) Any document generated under the provisions of the Shipping Act, 1916;

(5) Books of account such as general and subsidiary ledgers, journals, cash books, and check registers;

(6) Personnel records and supplementary records such as union agreements.

(c) Reports prepared by Federal, State, Local, or foreign governments pertaining to any documents referred to in this § 380.24, shall be retained for the same period as prescribed herein for the retention of the documents to which they apply.

(d) If identical copies of the same document serve more than one purpose, only the original copy is required to be retained.

(Approved by the Office of Management and Budget under control number 2133-0501)

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[48 FR 45560, Oct. 6, 1983]

Subpart D—[Reserved]

Subpart E—Compulsory Disclosure

§ 380.40 Subpoenas, other compulsory processes and requests.

In any case where it is sought by subpoena, order, or other compulsory process or other demand of a court or other authority to require the production or disclosure of any record in the files of the Maritime Administration or other information acquired by an officer or employee of the Maritime Administration as a part of the performance of his official duties or because of his official status, the matter shall be immediately referred for determination, through the Secretary of the Maritime Administration and Maritime Subsidy Board, to the Maritime Administrator, Department of Transportation.

[G.O. 112, 36 FR 21816, Nov. 16, 1971]

PART 381—CARGO PREFERENCE—U.S.-FLAG VESSELS

Sec.

381.1 Purpose.
381.2 Definitions.
381.3 Reporting information and procedure.
381.4 Fair and reasonable participation.
381.5 Fix American-flag tonnage first.
381.6 Informal grievance procedure.
381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.
381.8 Subsidized vessel participation.

AUTHORITY: Secs. 204(b), 212(d), and 901(b), Merchant Marine Act, 1936, as amended; 46 U.S.C. 1114(b), 1122(d), and 1241(b).

SOURCE: General Order 103, 36 FR 6894, Apr. 10, 1971, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this Part 381 is to prescribe regulations to be followed by all departments and agencies having responsibility under the Cargo Preference Act of 1954, section 901(b) of the

Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)), in the administration of their programs with respect to that Act, and to provide a uniform system for the collection of data on the administration of such programs for use in preparing the annual reports to Congress required by that Act.

§ 381.2 Definitions.

(a) "Cargo Preference Act of 1954" means section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)).

(b) "Cargoes subject to the Cargo Preference Act of 1954," include equipment, material or commodities:

(1) Procured, contracted for or otherwise obtained within or outside the United States for the account of the United States;

(2) Furnished within or outside the United States to or for the account of any foreign nation without provision for reimbursement;

(3) Furnished within or outside the United States for the account of any foreign nation in connection with which the United States advances funds or credits or guarantees the convertability of foreign currencies.

(4) Procured, contracted for, or otherwise obtained within or outside of the United States with advance of funds, loans or guaranties made by or on behalf of the United States.

(c) "Department or agency having responsibility under the Cargo Preference Act of 1954" means any department or agency of the Federal Government, administering a program that involves the transportation on ocean vessels of cargoes subject to the Cargo Preference Act of 1954. At present, these agencies include:

(1) Department of State.

(2) Department of Agriculture.

(3) Department of Defense.

(4) Post Office Department.

(5) General Services Administration.

(6) Export-Import Bank of the United States.

(7) National Aeronautics and Space Administration.

(8) Inter-American Development Bank.

(9) U.S. Information Agency.

(10) Department of Interior.

(11) Department of Commerce.

(12) Department of Treasury.

(13) Department of Health, Education, and Welfare.

(14) Department of Housing and Urban Development.

(15) Department of Transportation.

(16) Atomic Energy Commission.

(17) Tennessee Valley Authority.

(18) Veterans Administration.

(19) Smithsonian Institution.

(20) Library of Congress.

(d) "Liner parcel" means any cargo, dry or liquid, normally carried under berth terms by common carriers in ocean trades.

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[G.O. 103, 36 FR 6894, Apr. 10, 1971, as amended by Amdt. 1, 36 FR 10739, June 2, 1971; 36 FR 19367, Oct. 5, 1971; 42 FR 57126; Nov. 1, 1977]

§ 381.3 Reporting information and procedure.

(a) *Reports of cargo preference shipments.* Each department or agency subject to the Cargo Preference Act of 1954, except the Department of Defense for which separate regulations will be issued, shall furnish to the Maritime Administration, Cargo Preference Control Center, Transportation Building, Washington, DC 20590, within 20 working days of the date of loading for shipments originating in the United States or within 30 working days for shipments originating outside the United States, the following information concerning each shipment of preference cargo:

(1) Identification of the sponsoring U.S. Government agency or department;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Commodity description;

(8) Gross weight in pounds;

(9) Total ocean freight revenue in U.S. dollars.

(b) *Format of reports.* The information listed in paragraph (a) of this section shall be furnished to the Maritime Administration in a format prepared by the reporting department or agency and approved by the Maritime Administrator, Department of Transportation as suitable for the purpose of carrying out his responsibility under section 901(b)(2) of the Merchant Marine Act, 1936, as amended, pursuant to the authority delegated to him thereunder by the Secretary of Transportation under section 3 of Department Organization Order 10-8, 36 FR 1223. Where obtainable, a properly notated and legible copy of the ocean bill of lading in English will suffice. Reporting formats shall be submitted for approval by April 30, 1971.

(c) *Shipments made subject to the Act.* In those instances where a shipment has been made that was not known to be subject to the Cargo Preference Act of 1954 when it was made, but subsequent events cause it to be subject to that Act, the agency taking the action that caused the shipment to be subject to the Act shall furnish to the Maritime Administration, Cargo Preference Control Center, the information listed in paragraph (a) of this section in the approved reporting form.

§ 381.4 Fair and reasonable participation.

In order to insure a fair and reasonable participation by U.S.-flag commercial vessels in liner parcel cargoes subject to the Cargo Preference Act of 1954, as required by that Act, the head of each department or agency having responsibility under that Act shall prescribe regulations or formal staff instructions providing for the cargo mix of liner parcel cargoes transported on ocean vessels to be divided between privately owned U.S.-flag vessels and foreign-flag vessels in such a manner as to yield to the U.S.-flag vessels freight revenue per long ton at least equal to the freight revenue per long ton afforded the foreign-flag vessels participating in the same grant, loan, or purchase transaction. A copy of the regulations or staff instructions prescribed by each department or agency shall be furnished to the Secretary, Maritime Administration, no later than June 30, 1971, for approval.

[G.O. 103, Amdt. 1, 36 FR 10739, June 2, 1971]

§ 381.5 Fix American-flag tonnage first.

Each department or agency having responsibility under the Cargo Preference Act of 1954 shall cause each full shipload of cargo subject to said act to be fixed on U.S.-flag vessels prior to any fixture on foreign-flag vessels for at least that portion of all preference cargoes required by that Act to be shipped on U.S.-flag vessels, computed by purchase authorization or other quantitative unit satisfactory to the agency involved and the Maritime Administration, except where such department or agency determines, with the concurrence of the Maritime Administration, that (a) U.S.-flag vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels, or (b) that there is a substantially valid reason for fixing foreign-flag vessels first.

[G.O. 103, Amdt. 2, 36 FR 19254, Oct. 1, 1971]

§ 381.6 Informal grievance procedure.

(a) Whenever any person has a question, problem, complaint, grievance, or controversy pertaining to the terms and conditions of any tenders, charter party terms, or other matter involving the administration of the Cargo Preference Act of 1954, such person may request the Maritime Administration to afford him an opportunity to discuss the matter informally with representatives of the Maritime Administration and, if other U.S. Government agencies or foreign missions, embassies, or agencies acting on behalf of a foreign government are involved with them or persons authorized to speak for them.

(b) In such cases, a request may be made by telephone or letter to the Chief, Office of Market Development, Maritime Administration, Washington, DC 20590, Area Code 202, phone 967-3325. When such a request has been received, the Maritime Administrator, Department of Transportation or his designated representative will promptly consider the matter on its merits and provide assistance if possible. If the matter cannot be resolved satisfactorily by the Maritime Administration, the Maritime Administrator, Department of Transportation or his designated representative will then arrange for a meeting at a time and place satisfactory to all interested parties so that the matter may be freely discussed and resolved.

(c) At such meetings, the Maritime Administrator, Department of Transportation or his designated representative may request any U.S. Government agency, foreign mission, embassy, or agency acting on behalf of a foreign government, or others having an interest in the matter to attend such a conference, or to send representatives authorized to speak for them. All such meetings and conferences will be conducted in an informal manner.

[G.O. 103, Amdt. 3, 37 FR 3641, Feb. 18, 1972]

§ 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) *Agreement Clauses.* "Use of United States-flag vessels:

"(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

"(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) *Contractor and Subcontractor Clauses.* "Use of United States-flag vessels: The contractor agrees—

"(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

"(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

"(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[42 FR 57126, Nov. 1, 1977]

§ 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag liner and bulk vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1214(b)), shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operator's bid by:

(1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidders;

(2) Deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's bid;

(3) Comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder;

(4) Requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and

(5) Determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid pursuant to paragraph (b)(3) of this section, is at or below the fair and reasonable guideline rate.

(c) If the amount of dry bulk cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid and requesting from MARAD a revised fair and reasonable guideline rate in accordance with the provisions of paragraph (b) of this section.

(d) Whenever a bid is submitted for a U.S.-flag vessel for the transportation of dry bulk preference cargo, the responsible department or agency shall only approve bids that apply to an individual vessel, and may not accept combined bids submitted for more than one vessel. If two or more vessels are offered, separate bids shall be submitted for each vessel. A bidder may submit a conditional lower bid for each vessel to be effective only if more than one vessel is [illegible]tracted to carry the cargo.

(e) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part.

(f) The requirements of this section shall not apply to foreign aid consisting of direct cash transfer payments under specific agreements between departments or agencies and the recipient country with respect to the utilization of U.S.-flag vessels for transportation of commodities purchased with such funds.

[53 FR 24272, June 28, 1988]

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

Sec.
382.1 Scope.
382.2 Data Submission.
382.3 Determination of fair and reasonable rates.
382.4 Waiver.

AUTHORITY: Secs. 204 and 901 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1241); 49 CFR 1.66.

SOURCE: 54 FR 49088, Nov. 29, 1989, unless otherwise noted.

§ 382.1 Scope.

These regulations prescribe the type of information that must be submitted by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except less than full cargoes on liner vessels, pursuant to section 901 of the Merchant Marine Act, 1936, as amended.

§ 382.2 Data Submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators and are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator as specified herein. Failure of a vessel operator to submit the required cost data will result in MARAD being unable to construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required information for each vessel.* The following information shall be submitted not later than 120 days following the effective date of this part for the previous calendar year and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name.

(2) Vessel DWT and net registered tonnage for the Suez and Panana Canals.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel, per day.

(6) Fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs), by type of fuel, per day.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, such information to be submitted, by vessel, in the format stipulated by 46 CFR 232.1, Form MA-172 Schedule 301. Tug/barge operators shall submit such information separately for each tug and barge employed in the preference trade. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this regulation an operating day is defined as any day on which a vessel or barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin operations.

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage within 60 days of the termination of the voyage, identifying the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use 46 CFR part 232, Uniform Financial Reporting Requirements, and 46 CFR part 272, Maintenance and Repair Reporting Instructions, for guidance in submitting cost data. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of these regulations is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under 5 U.S.C. 552, MARAD will inform the submitter of such request and allow the opportunity to comment. The submitter shall claim confidentiality at that time by memorandum or letter, stating the basis, in detail, for such assertion of exemption to disclosure, including, but not limited to, statutory and decisional authorities. Those parts not so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control number 2133-0514)

§ 382.3 Determination of fair and reasonable rates.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component.* An operating cost component, based on actual operating costs of each participating vessel, shall be determined on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as defined by 46 CFR 232.5, Form MA-172 Schedule 301, Operating Expenses. (For purposes of this rule, charter hire expenses are not considered operating costs.) Such data shall be escalated by MARAD yearly to the current period utilizing escalation factors for wage and nonwage costs applied to those cost categories in escalating operating subsidy costs for the same period. Fuel costs shall be determined individually based on the actual fuel consumptions, at sea and in port, for each vessel and current fuel prices in effect at the time of the preference cargo voyage(s).

(b) *Capital component*— (1) *General.* A capital cost component shall be constructed for each eligible vessel consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-

year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 10 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate (in the event these items are not furnished they shall be constructed by MARAD). When vessels more than 10 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old will be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 20-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be the same rate as described in paragraph (b)(2)(iii) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast, unless the vessel is scrapped or sold immediately after discharge of the preference cargo. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included. In the event a backhaul cargo is obtained, an adjustment to allowable voyage days shall be made.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "international rules for the interpretation of trade terms" (INCOTERMS).

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the vessel's normal operating speed, and shall include for single unit ves-

sels and fully integrated tug/barge units (ITB's), as defined by the definition of Pushing Mode ITB contained in U.S. Coast Guard Navigation and Vessel Inspection Circular 2-18, change 1, enclosure (1), an additional five percent to account for weather conditions. An allowance of ten percent shall be added for all other tug/barge units.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less than 70 percent of deadweight be used for rate calculation purposes. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate for each parcel shall be provided based on the combined voyage.

(g) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component divided by the amount of cargo to be carried as determined by paragraph (f) of this section, expressed as cost per ton.

§ 382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

PART 383—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF PARCELS OF DRY BULK PREFERENCE CARGOES ON U.S.-FLAG LINER VESSELS

Sec.

383.1 Scope.
383.2 Data submission.
383.3 Determination of fair and reasonable rates.

AUTHORITY: Secs. 204(b), 901(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1241(b)); 49 CFR 1.66.

SOURCE: 52 FR 37774, Oct. 9, 1987, unless otherwise noted.

§ 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates and the type of information that must be submitted by liner operators interested in carrying such preference cargoes.

§ 383.2 Data submission.

(a) *General.* Operators wishing to employ liner vessels in the carriage of liner parcels of dry bulk preference cargoes must submit information as provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. The information in paragraph (b)(1) of this section shall be submitted not later than April 30 of each year and updated not less often than once every 12 months. The information in paragraphs (b)(2) and (b)(3) of this section shall be submitted initially and, thereafter, only when changes occur. All submissions shall be certified by the operator and are subject to verification by MARAD.

(b) *Required information.* (1) For each vessel an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted, by vessel type, in the format stipulated by 46 CFR 232.1, Form MA-172, including cargo carried, operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) Total vessel costs capitalized (list and date capitalized improvements separately) and applicable interest rates for indebtedness shall be submitted for each vessel.

(3) Fuel consumption, by grades of fuel consumed, shall be submitted for

each vessel at normal operating speed and while in port, in metric tons per day.

(4) An operator which already submits the information in paragraph (b)(1) of this section to MARAD in conjunction with other MARAD programs need not submit a duplicate of the information.

(c) *Confidentiality.* If the data submitted under this rule contains information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data is submitted. The claim shall be made in a letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential. In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority, and that measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise becomes available to the public, why such disclosure or availability does not compromise the confidential nature of the information. In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration. If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

(Approved by the Office of Management and Budget under control number 2133-0515)

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost components.* MARAD shall calculate a fair and reasonable rate for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a fuel cost component, a capital cost component, and a component for port and cargo handling expenses.

(b) *Operating cost component*—(1) General. MARAD shall calculate a daily average operating cost based on the aggregate average operating costs of all breakbulk, partial container, and LASH vessels. The daily average shall be based on cost data for the calendar year immediately preceding the current year, submitted in accordance with § 382.2(b)(1). Such data shall be escalated by MARAD to the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation with the exception of fuel costs, and shall include non-fuel expense categories as defined by 46 CFR 232.1, Form MA-172, Schedule 301, Operating Expenses.

(c) *Fuel component.* Fuel costs shall be determined as a separate component for each vessel based on the vessel's rate of consumption and current fuel prices.

(d) *Capital component*—(1) General. MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating vessel, consisting of vessel depreciation, interest, return on working capital (one-half average voyage expenses), and return on equity.

(2) *Items included.* The capital component shall include:

(i) *Depreciation.* The owner's actual construction cost, reconstruction cost or purchase cost shall be depreciated straight-line, based on a 25 year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal installments over a 25-year period. If an actual interest rate is not available, the prevailing rate of interest for Title XI financing at the time of capitalization shall be used.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover one-half the operating costs of the vessel for the voyage (as calculated in paragraph (b)(1) of this section). The rate of return shall be based on the most recent return on stockholder's equity for a representative cross section of transportation industry companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (d)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(e) *Port and cargo handling component*—(1) General. MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element as applicable. Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments. Additional services such as bagging at discharge, rail or truck loading, oncarriage to some inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable rate guideline, charges beyond the seaport terminal at which a vessel discharges should be reviewed and approved by the sponsoring Government shipper agency. In the event such charges are not approved, the cargo preference requirement must be met by utilizing a U.S.-flag vessel for the ocean transportation, if such a vessel will accept the guideline rate for the ocean transportation only.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender, expressed as a cost per ton.

(ii) *Foreign port and cargo handling charges.* To the extent possible MARAD shall include in this category all known foreign port and cargo handling charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender, expressed as a cost per ton.

(3) *Terms.* If the terms of the rate are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(f) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating, fuel, and capital cost components of the fair and reasonable rate, the voyage length and cargo tons shall be based on the number of voyage days and total payable tons per sailing for the vessel type and service for which the fair and reasonable rate is being calculated, as determined from data submitted in accordance with § 383.2(b)(1). The component for port and cargo handling charges shall be based on cargo tender terms.

(g) *Total rate.* The operating cost component, fuel cost component, capital cost component, and port and cargo handling cost component each expressed as a cost per ton, shall be added together. The sum of the four components, plus an additional four percent to account for brokers' commissions and general and administrative expenses, shall yield the guideline rate.

PART 385—RESEARCH AND DEVELOPMENT GRANT AND COOPERATIVE AGREEMENTS REGULATIONS

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Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973); and Secretary's Circular 30 (Nov. 5, 1979).

Source: 45 FR 66168, Oct. 6, 1980, unless otherwise noted.

General

§ 385.1 Scope.

This part sets forth information about the Maritime Administration (MarAd) assistance regulations: Their purpose, authority, applicability, issuance, arrangement, implementation, and exception procedure; definitions of terms; and general MarAd assistance policies.

Regulation System

§ 385.2 Scope.

Sections 385.2 through 385.9 set forth introductory information pertaining to the MarAd assistance regulations: Their purpose, authority, applicability, exclusions, issuance, arrangement, publication, and exceptions.

§ 385.3 Purpose.

Sections 385.2 through 385.9 establish the MarAd assistance regulations which codify, implement, and publish uniform assistance policies and selected procedures applicable to MarAd and recipients of MarAd assistance awards. The MarAd assistance regulations do not, in and of themselves, provide authority for the use of assistance instruments nor the making of assistance awards where statutory authority has not been otherwise provided. Generic authority to award grants and cooperative agreements is provided in Pub. L. 95-224, the Federal Grant and Cooperative Agreement Act of 1977. The assistance regulations are distinct from the Federal and MarAd and Department of Transportation procurement regulations.

§ 385.4 Authority.

The MarAd assistance regulations are issued pursuant to section 204(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)), and pursuant to delegation of authority by the Secretary of Transportation to the

Maritime Administrator, Department of Transportation.

§ 385.5 Applicability.

The MarAd assistance regulations apply to all MarAd research and development programs which will result in assistance awards, and to all recipients eligible for MarAd assistance awards such as state and local governments, institutions of higher education, hospitals, other nonprofit organizations, individuals, profitmaking organizations, and foreign organizations. The provisions of this part govern the award and administration of all such financial assistance matters, including resolutions and guidelines issued by MarAd except:

(a) As otherwise required by statute; and,

(b) As otherwise provided by specific program regulations.

§ 385.6 Exclusions.

Excluded from this part are requirements pertaining to procurement contracts subject to the Federal Property and Administrative Services Act of 1949 and the Federal and MarAd procurement regulations, interagency agreements, memorandums of understanding and programs or projects which directly disseminate technical information, or provide consultation, technical service, information, and data counseling to recipients without the use of an assistance instrument. Also excluded is the sale, lease, license, or other authorization to use Federal property, when such use is not incidental to the purpose of stimulation or support.

§ 385.7 Issuance.

The MarAd assistance regulations are issued in the Code of Federal Regulations as Part 385, Chapter II, of Title 46, Shipping, after publication in the FEDERAL REGISTER. Copies of the MarAd assistance regulations in the FEDERAL REGISTER and Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

§ 385.8 Arrangement.

(a) *General Plan.* The genera format, numbering system, and nomenclature used in this part conform with FEDERAL REGISTER standards.

(b) *Citation.* The MarAd assistance regulations will be cited in accordance with FEDERAL REGISTER standards. Thus, this paragraph, when referred to within divisions of the MarAd assistance regulations, should be cited as "§ 385.8(b)." When this section is referred to formally in other documents outside of this part, it should be cited as "46 CFR 385.8(b)."

(c) *Implementation.* Instructions and procedures needed by MarAd to internally implement this part will be contained in a separate MarAd Financial Assistance Manual, which will be available to the public upon request.

§ 385.9 Exceptions, deviations, or waivers.

Requests for exceptions, deviations, or waivers from the requirements of this part, unless exceptions are required by program legislation or program regulations, shall be submitted to the Grants Officer. Exceptions may be approved by the Grants Officer on matters within the scope of his authority, or obtained by said Grants Officer from higher authority within the Department of Transportation or from the Office of Management and Budget when required by law or other applicable Federal requirement.

DEFINITION OF TERMS

§ 385.20 Scope.

Only those definitions needed to understand this part will be defined. Generally, terms defined elsewhere in statutes, OMB circulars, and other Federal requirements will not be restated. Special attention is directed to the definitions in the Standard General Provisions of MarAd's grant and cooperative agreements (See § 385.62).

§ 385.21 Definitions.

(a) "Assistance" is where the principal purpose of the relationship is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute rather than of acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government.

(b) "Assistance instrument" is a general term which identifies a class of instruments used to award assistance. These instruments include grant and cooperative agreements, as defined in § 385.32 (c) and (d) of this part.

(c) "Act" means the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224).

(d) "MarAd" means the Maritime Administration within the Department of Transportation.

(e) "Secretary" means the Secretary of Transportation.

(f) "Maritime Administrator" means the Maritime Administrator, Department of Transportation to whom the Secretary has delegated authority to administer within MarAd the provisions of the Act.

(g) "Grants Officer" means the primary delegate of the Maritime Administrator responsible for administration of grants and cooperative agreements for research and development within MarAd.

(h) "Awards Officer" means the principal executive subordinate to the Grants Officer responsible for the day-to-day administration of grants and cooperative agreements for research and development.

GENERAL POLICIES

§ 385.31 Scope.

Sections 385.31 through 385.62 set forth the regulations applicable to all assistance instruments as defined herein.

§ 385.32 Selection of award instrument.

(a) *General.* This section provides guidance on the appropriate use of award instruments consistent with the Act and the supplementary interpretative guidelines required by section 9 of the Act, which were published by the OMB in the FEDERAL REGISTER of August 18, 1978 (41 FR 36860), and are incorporated by reference herein. This section applies to all program and individual transactions where the choice of award instruments is within the administrative discretion of MarAd and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the terms and conditions and the nature of the relationship between MarAd and eligible recipients. The award instruments are intended to be different in purpose, application, content, and nature. When properly employed, they create different relationships between the parties. Because of these differences, the decision to use a particular instrument must be made deliberately. The determination of whether a program, to be implemented through individual transactions, is principally one of acquisition or assistance will be made by the Grants Officer. MarAd generally will employ the cooperative agreement form of assistance instrument but will employ the grant form where deemed appropriate.

(b) *Procurement contract.* A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever (1) the principal purpose of the instrument is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever MarAd determines in a specific instance that the use of a type of procurement contract is appropriate.

(c) *Grant agreement.* A type of grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

(d) *Cooperative agreement.* A type of cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

§ 385.33 Unsolicited applications and proposals for financial assistance awards.

(a) *Policy.* Although it is MarAd policy to solicit applications and proposals for assistance awards where possible, MarAd also values obtaining innovative ideas, methods, and approaches in maritime transportation areas offered by the public through unsolicited applications and proposals. It is the policy of the Government to foster and encourage the submission of unsolicited proposals. This § 385.33 is designed to encourage the submisson of unsolicited proposals relating to MarAd's mission and to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

(b) *Scope.* This section applies to unsolicited proposals being considered for support through an assistance instrument. This section does not apply when a procurement contract is the appropriate award instrument in accordance with § 385.32(b).

(c) *Definition of unsolicited proposal.* The term "unsolicited proposal" means a written offer to perform a proposed task or effort, initiated and submitted to MarAd by a prospective recipient (offeror) without solicitation by MarAd, and with the objective of obtaining an award. The term may include both requests for support of a new project and requests for additional support of a previously funded project (renewals).

(d) *Advance consultation.* Organizations or individuals who are interested in submitting an unsolicited proposal are encouraged, before expending extensive effort in preparing a detailed unsolicited proposal or submitting any proprietary information to the Government, to make preliminary inquiries of MarAd program staff as to the general interest in the type of project contemplated. Prior contact with agency technical personnel is permissible and is encouraged, with the limited objectives of conveying to the prospective recipient an understanding of the agency mission and interest relative to the type of project contemplated. The project officer shall not indicate or imply in discussions with the potential proposer that a proposal will result in an award. Nothing is to be suggested to encourage or authorize the potential proposer to perform any work at MarAd expense in anticipation of support or an award. If there have been prior discussions with a particular MarAd program office, a statement of this fact should be stated on the face of the proposal.

(e) *Guides.* Guides for preparing the content of unsolicited proposals are available from the Awards Officer (M-900), Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Notwithstanding these guides, state and local governments may submit unsolicited applications or proposals using the application forms authorized by OMB Circular No. A-102, Attachment M.

(f) *Submission point.* All unsolicited proposals for new or renewals of financial assistance awards shall be submitted to Awards Officer (M-900), Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.

(g) *Receipt and review.* (1) Receipt of unsolicited proposals will be acknowledged promptly by the Awards Officer and then forwarded expeditiously to potentially interested program offices for comment. Each unsolicited proposal that is circulated for a comprehensive evaluation shall have a legend attached or imprinted on it by the Awards Officer, identifying it as an unsolicited proposal and stating that it shall be used only for purposes of evaluation.

(2) The responsible program officials shall evaluate the proposal fairly and objectively using the criteria in §§ 385.50 through 385.52.

(3) An unsolicited proposal may include data which the proposer does not want disclosed for purposes other than the evaluation of the proposal. In such case, the proposer should mark each page containing such data with the words "Proprietory Data—Restricted Use" at the top of the page. In the event that an unsolicited proposal, in whole or in part, indicates that the proposer wishes to impose restrictions on the use or disclosure of the data contained in the proposal, MarAd personnel handling the proposal will take care to ensure that the information in the proposal is not disclosed outside of MarAd. The Awards Officer has responsibility for ensuring that proposal reviewers are free of any direct affiliation with the individual(s) or institution submitting the proposal. MarAd policy on the use of information contained in proposals is to use such information only for evaluation purposes, except to the extent such information is generally available to the public, is already the property of the Government, or is available to the Government without restriction. Accordingly, if a proposal contains information the proposer wishes to protect, the proposer shall mark the cover page of the proposal with the following Notice:

> NOTICE: The data contained in pages — of this proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial information, and such data shall be used or disclosed only for evaluation purposes: *Provided*, That if this proposer receives an award as a result of or in connection with the submission of this proposal the Government shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the proposer.

MarAd shall ensure that all copies of the proposal carry the above Notice, and that it is not disclosed outside MarAd, except with the consent of the proposer.

(h) *Criteria* for acceptance of an unsolicited proposal are those listed in §§ 385.50 through 385.52. If an unsolicited proposal fails to meet any of the criteria, the proposer will be notified by the Awards Officer in accordance with paragraph (j) of this section.

(i) *Funding determination.* The responsibility for deciding funding availability rests solely with the Grants Officer and will not be considered by the proposal reviewers.

(j) *Nonsupport of proposal.* If the proposal does not offer sufficient technical merit or program value; is not relevant to the accomplishment of a public purpose authorized by MarAd program legislation; or if funds are not available; the proposal will be returned to the proposer, if the proposer so requests. The Awards Officer shall prepare a letter to the proposer which sets forth the basis for rejection of the unsolicited proposal or application.

(k) *Support of proposal.* There is no prescribed format for the program documentation necessary to justify providing assistance. The minimum requirements are that: there be a reasonable basis for acceptance based on the criteria set forth in §§ 385.50 through 385.52; the rationale for providing support be written, and approvals be obtained as required by MarAd; and, that a copy of the documentation be included in the assistance instrument award file. The rationale for providing assistance may be included in documents required for project approval.

§ 385.34 Responsibility for issuing solicitations for proposals or applications.

(a) It is MarAd policy to favor solicitation of proposals or applications, where discretionary assistance awards are available, in preference to relying on unsolicited proposals, in order to maximize opportunities for open participation by the public in MarAd assistance awards.

(b) The Awards Officer shall be responsible for issuing solicitations, announcements, or the like, which call for the submission of proposals and applications by a certain due date which, if favorably acted upon by MarAd, may result in assistance awards.

§ 385.35 Program opportunity notices.

(a) A program opportunity notice can be used to stimulate the flow of unsolicited proposals or applications when the program objectives cannot be defined sufficiently to prepare a program solicitation.

(b) The program opportunity notice will contain the following, at a minimum:

(1) A number assigned for control and reference purposes;

(2) A brief description of the broad, general technical program or areas needing investigation (generally 50 words or less);

(3) A statement of the principal program objective in possibly funding unsolicited proposals as either:

(i) The acquisition of concepts, property, or services for the direct benefit or use of the Federal Government; or

(ii) The transfer of money, property, or services to a recipient for support or stimulation authorized by Federal statute;

(4) A statement about how unsolicited proposals will be evaluated and accepted:

(i) If the principal program objective is to accomplish a public purpose of support or stimulation, the criteria in §§ 385.50 through 385.52 shall be applied;

(ii) If the principal program objective is the acquisition of concepts, property, or services for the direct benefit or use of the Federal Government (*i.e.*, procurement), the policy regarding evaluation and acceptance of unsolicited proposals in 41 CFR 9-4.9 shall apply;

(5) Restrictions, if any, as to who may submit proposals;

(6) A contact where additional information may be obtained;

(7) An expiration date which identifies when the program opportunity notice will no longer be current. This date shall not be used as a required common due date for submission of proposals;

(8) A statement that MarAd reserves the right to support or not support, in whole or in part, any or all proposals received;

(9) A statement that MarAd assumes no responsibility for any costs associated with specific proposal preparation if no award is made; but that if an award is made, MarAd will pay its allocable share of bid and proposal expenses as provided for in applicable Federal cost principles;

(10) A statement that proposals submitted pursuant to the notice shall be mailed to the Awards Officer (M-900), Maritime Administration, Room 4885, U.S. Department of Transportation, Washington, DC 20590.

(11) A reference that detailed information concerning assistance policy and procedures is contained in these assistance regulations, 46 CFR Part 385;

(12) As much information as possible as to how proposals and applications will be evaluated;

(13) Policies and procedures for patents, data, and copyrights. Proposers have the right to request in advance of or within thirty (30) days after the effective date of award a waiver of all or any part of the United States rights in subject inventions.

(c) The program opportunity notice shall be in a format that best reflects the needs of the specific program, for example, letter, booklet, bulletin, or other documents.

(d) The program opportunity notice shall be distributed widely. It may be distributed to industry associations, including small business associations; schools, colleges, and universities; appropriate professional and scientific journals; state, local, and regional governmental organizations; the Commerce Business Daily; other MarAd offices; and individuals and organizations who request copies on a one-time basis.

(e) The submission of innovative methods, approaches or ideas will not be restricted to those problems or technical areas published in the program opportunity notice. Alternatives will be eligible for consideration.

§ 385.36 Public notice of availability of assistance awards.

(a) In order to maximize involvement of prospective recipients in MarAd assistance programs, it is MarAd's policy, wherever possible, to provide timely notice to the public as to the availability of assistance awards.

(b) Early notice regarding legislated grant or other assistance programs will br provided by MarAd to the Office of Management and Budget for publication in the Catalog of Federal Domestic Assistance pursuant to Office of Management and Budget Circular No. A-89. When legislated assistance programs or program objectives which are to be implemented through assistance instruments reach the point where applications or proposals need to be obtained, timely notice of such solicitations will be published in the FEDERAL REGISTER, Commerce Business Daily, trade and professional journals which are widely circulated to state and local governments, and news media, as appropriate to communicate with potentially interested applicants.

(c) When a MarAd assistance project involves making assistance available through prime recipients to subrecipients, such as through states to local governments, prime recipients should provide timely advance notice to subrecipients as to the availability of such assistance, and provide a reasonable time period for subrecipients to prepare applications and secure prerequisite local approvals.

§ 385.37 Requirement for unrestricted solicitations for discretionary assistance awards.

(a) *Policy.* It is MarAd policy to maximize the opportunity for prospective recipients to be considered for assistance awards where eligibility is not prescribed by law. Therefore, when eligibility is not prescribed by law or a final program regulation, and when discretionary assistance awards are selected to accomplish a program objective, applications or proposals will be obtained, wherever practicable, by issuance of a written solicitation. When MarAd initiates the solicitation of applications or proposals, eligibility to be considered for discretionary awards will not be restricted by MarAd to one category of recipients or to a single recipient without adequate basis.

(b) *Justification of restricted eligibility.* Where program legislation explicitly restricts eligibility, *e.g.*, to state governments, no justification is required. When program regulations restrict eligibility beyond the restrictions required by the program legislation, the basis for the restriction shall be set forth in the program rulemaking.

41 CFR 9-3.805-51 shall be used as a guide in preparing the "justification for restricting eligibility." The reasons offered will be evaluated for consistency with the policy in paragraph (a) of this section, MarAd's overall mission, and the objective of maintaining an open and fair system of making assistance awards.

(c) *Approvals.* Justifications of restricted eligibility will be signed by the Grants Officer and will be reviewed by Office of General Counsel for legal sufficiency prior to issuance of the restricted solicitation. The signed justification will be filed in official award file.

§ 385.38 Joint funding.

(a) Pursuant to section 10(c) of the Act, MarAd is authorized to participate in joint funded projects with other Federal agencies in any funding relationship which will serve the best interest of all of the participating agencies' program. Such joint funding project may include more than one type of assistance relationship, *e.g.*, some components of project may be funded by grants and other components of the project may be funded by cooperative agreements.

(b) It is MarAd's positive policy, further, to encourage cost-sharing on the part of applicants for financial assistance. The willingness of applicants to cost-share is a primary factor in making, or not making, an assistance award.

§ 385.39 Socio-economic and environmental policies.

A number of socio-economic and environmental policies of the Federal

Government are incorporated into the standard general provisions of the grant agreement and cooperative agreements, and are identified as explicit criteria in §§ 385.51 and 385.52.

§ 385.40 Disputes.

Procedures for resolution of disputes between a recipient and MarAd appear in the standard general provisions of the grant and cooperative agreements referenced in § 385.62, of this part.

CRITERIA FOR AWARD

§ 385.50 Scope.

Sections 385.51 and 385.52 set forth the criteria to be used by MarAd in evaluating all projects and all potential recipients prior to award of a grant or cooperative agreement.

§ 385.51 Criteria: Projects.

The criteria to be used by MarAd in evaluating all projects prior to award of a grant or cooperative agreement are as follows:

(a) In terms of the accomplishment of a public purpose—

(1) The potential contribution which the proposed work is expected to make to the MarAd assistance mission;

(2) The economic, environmental, and societal significance which a successful demonstration or project may have for the nation, and in particular the national merchant marine program;

(3) the relationship of the proposal to:

(i) The public need for the potential results of the research, development, or demonstration effort, and whether it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance;

(ii) Whether the potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(iii) The extent of the problems treated and whether the objectives sought by the undertaking are national, widespread, or regional in their significance;

(iv) The extent of opportunities to induce non-Federal support of the undertaking;

(v) The degree of risk of loss of the investment inherent in the research, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of the research so as to further timely development of the technology; and,

(vi) The availability of appropriations to MarAd.

(b) In terms of the particular objectives of the project, whether the project has:

(1) High technical merit which promises or represents an innovative idea, method, or approach;

(2) Program value not previously recognized or pursued by MarAd; and,

(3) A reasonable degree of probability of achieving the stated objectives.

§ 385.52 Criteria: Applicant.

The criteria to be used by MarAd in evaluating all applicants prior to award of a grant or cooperative agreement are as follows:

(a) The qualifications, capabilities, resources (both financial and technical) and experience of the applicant;

(b) The facilities or techniques which the proposer possesses and offers which are considered to be integral factors for achieving the objectives of the proposal;

(c) The qualifications, capabilities, and experiences of the proposed investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal;

(d) The precision and detail with which the applicant states its plan to further the formally adopted socioeconomic and environmental policies of the United States (*e.g.*, the encouragement of minority business enterprises); and,

(e) The extent to which the applicant will share the total estimated cost of the project.

FORMS OF AGREEMENTS

§ 385.60 Scope.

Sections 385.61 through 385.62 describe the form and content of the two parts which comprise a grant agreement or a cooperative agreement which will be executed by MarAd and a recipient of financial assistance.

§ 385.61 Grant and cooperative agreements: Special provisions.

(a) MarAd has adopted two format matrices, one for grant agreements and one for cooperative agreements, to accommodate the variables inherent in undertaking a project with a particular recipient. These variables include, for example, identity of the recipient, scope of work, schedule of performance and obligations assumed by both parties.

(b) The format matrices are available on request from the Awards Officer, and a copy of each is included in the information kit provided to all potential recipients of financial assistance.[1]

(c) MarAd will adapt the appropriate format matrix to the extent deemed necessary when drafting the particular agreement to be executed by MarAd and a recipient of financial assistance for a specific project.

§ 385.62 Grant and cooperative agreements: Standard general provisions.

(a) MarAd has adopted two standard general provisions which apply to grant and cooperative agreements, respectively, and said provisions are hereby incorporated by reference into these regulations.[2]

(b) MarAd reserves the right to amend or to render inapplicable any portion of the particular standard general provisions required for any particular grant or cooperative agreement: *Provided*, That such modification shall be accomplished only by means of an explicit statement in the special provisions executed by MarAd and a particular recipient.

PART 386—REGULATIONS GOVERNING PUBLIC BUILDINGS AND GROUNDS AT THE UNITED STATES MERCHANT MARINE ACADEMY

Sec.

386.1 Hours of admission to property.
386.3 Preservation of property.
386.5 Conformity with signs and posted regulations.
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386.9 Gambling.
386.11 Alcoholic beverages and controlled substances.
386.13 Soliciting, vending, and debt collection.
386.15 Distribution of handbills.
386.17 Photographs for news, advertising, or commercial purposes.
386.19 Dogs and other animals.
386.21 Vehicular and pedestrian traffic.
386.23 Weapons and explosives.
386.25 Enforcement, penalties and other laws.

AUTHORITY: 40 U.S.C. 318; 32 FR 11969 (August 18, 1967), Pub. L. 97-31 (95 Stat. 151, August 6, 1981); 49 CFR 1.66.

SOURCE: 52 FR 21534, June 8, 1987, unless otherwise noted.

§ 386.1 Hours of admission to property.

Academy property shall be closed to the public during other than normal working hours, as well as during Regimental leave periods and indoctrination training for the fourth class year. The closing of property shall not apply where the Superintendent has approved the after normal working hours use of buildings or athletic facilities for authorized activities. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Academy business. The Superintendent, or a designated representative of the Superintendent, shall make the decision to close all or any areas of Academy property. This action shall be coordinated with the Head, Department of Public Safety and Security (Security), of the Academy. When property, or a portion thereof, is closed to the public, admission to the property, or to any area thereof, shall be restricted to authorized persons, who shall register with Security personnel upon entry to the property. When requested, any person shall display Government or other identifying credentials to Security personnel when entering, leaving, or while on Academy property.

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[1] An informational copy of both format matrices accompany this regulation as filed in the Office of the Federal Register.

[2] A copy of both such incorporated provisions accompany this regulation and are on file in the Office of the Federal Register.

§ 386.3 Preservation of property.

Prohibited actions against property on the Academy grounds are improper disposal of rubbish; theft of or damage to property; throwing articles from an Academy building; and climbing on statues, fountains or any part of a building.

§ 386.5 Conformity with signs and posted regulations.

Persons in and on Academy property shall, at all times, comply with official signs and posted regulations of a prohibitional, instructional or directional nature, and shall also comply with the directions of Academy special police and other authorized officials. These regulations shall be enforced by uniformed special police and other designated security personnel.

§ 386.7 Disturbances.

Any loitering, disorderly conduct or other conduct on Academy property which creates loud or unusual noise or a nuisance which unreasonably obstructs the use of any area, including entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; or impedes or disrupts the performance of official duties by Government employees or Midshipmen activities is prohibited.

§ 386.9 Gambling.

Unless permitted by Executive or Department of Transportation Order, participating in games of chance for money or other consideration, or in the operation of gambling devices, or the conduct of a lottery or a pool, or the selling or purchasing of numbers tickets, is prohibited on Academy property.

§ 386.11 Alcoholic beverages and controlled substances.

Operation of a motor vehicle on Academy property while intoxicated, under criteria set forth in the statutes of the State of New York, is prohibited. The consumption or possession by any person on Academy property of alcoholic beverages, narcotic drugs, h lucinogens, marijuana, barbiturat amphetamines or any other su stances controlled under the laws the State of New York or the Unit States is prohibited. These prohi tions shall not apply in cases whe drugs are being used as prescribed f a patient by a licensed physician. Th prohibition against possession a consumption of alcoholic beverag shall not apply when possessed or co sumed by staff or resident officers private residences, or when the Supe intendent, or a designee of the Supe intendent, has granted an exemptio in writing for an appropriate reason.

§ 386.13 Soliciting, vending, and debt co lection.

Soliciting aims, or commercial solic iting and vending of all kinds, display ing or distributing commercial adver tising, or collecting private debts i prohibited on Academy property. Thi prohibition does not apply to nationa or local drives for funds for charitable purposes, welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Superintendent; and to commercial lessees and contractors authorized to sell goods or services.

§ 386.15 Distribution of handbills.

The distribution of materials such as pamphlets, handbills and flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere in or on Academy property shall be coordinated with the Head, Department of Public Safety and Security, of the Academy so as not to impede Academy employees in the performance of their duties or Midshipmen activities.

§ 386.17 Photographs for news, advertising, or commercial purposes.

Such photographs for news, advertising or commercial purposes may be taken on Academy premises only with the written consent of the Office of External Affairs at the Academy.

Except where national security regulations apply or a Federal Court Order or rule prohibits, photographs for news purposes may be taken in entrances, lobbies, foyers or corridors, or in auditoriums in which public meetings are being held. Photographs for advertising and commercial purposes may be taken only with the written permission of and in locations specified by the Office of External Affairs.

§ 386.19 Dogs and other animals.

Persons are prohibited from bringing dogs and other animals on to the Academy premises, except for authorized purposes and except for seeing eye or other guide dogs, or pets approved in writing by the Superintendent or a designee of the Superintendent.

§ 386.21 Vehicular and pedestrian traffic.

Operators of all vehicles on Academy property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Academy special police, Security personnel or other authorized individuals, and all posted traffic signs and with restrictions indicated by marked traffic areas. The following acts are prohibited on Academy property: the blocking with vehicles of entrances, driveways, walks, loading platforms or fire hydrants; parking without a permit, except in emergencies; parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs or marked traffic areas, including yellow curbs. Vehicles parked in violation of the foregoing shall be subject to the issuance of a Traffic Violation Notice and/or removal of the vehicle at the owner's risk and expense. The Superintendent may issue and post other specific traffic directives as may be required, applicable to drivers and pedestrians. When so issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was in violation of these regulations or such directives shall be evidence that the registered owner was responsible for the violation.

§ 386.23 Weapons and explosives.

No person shall carry or possess firearms, other dangerous or deadly weapons or parts thereof, explosives or items intended to be used to fabricate an explosive or incendiary device, or parts thereof, either openly or concealed, while on Academy property, except for official purposes specifically authorized in writing by the Superintendent or a designee of the Superintendent.

§ 386.25 Enforcement, penalties and other laws.

Whoever shall be found guilty of violating any regulations in this part while in or on Academy property is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Nothing in these regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated. These regulations shall be posted prominently throughout the Academy. Penalties for their violation shall be incorporated in the Schedule of Fines for Petty Offenses established by order of the United States District Court for the Eastern District of New York.

SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

PART 390—CAPITAL CONSTRUCTION FUND

Sec.

390.1 Scope of the regulations.
390.2 Application for an agreement.
390.3 Policy considerations.
390.4 Description of the agreement.
390.5 Agreement vessels.
390.6 Administration of the agreement.
390.7 Deposits into the fund.
390.8 Investment of the fund.
390.9 Qualified withdrawals.
390.10 Nonqualified withdrawals.
390.11 Sale or other disposition of agreement vessels.
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390.14 Departmental report and certification.

APPENDIX I TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS
APPENDIX II TO PART 390—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT
APPENDIX III TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—SAMPLE SEMIANNUAL REPORT
APPENDIX IV TO PART 390—SAMPLE ADDENDUM TO MARITIME ADMINISTRATION CAPITAL CONSTRUCTION FUND AGREEMENT
APPENDIX V TO PART 390—SAMPLE QUALIFIED TRADE AFFIDAVIT

AUTHORITY: Sections 204(b) and 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b) and 1177); 49 CFR 1.66.

SOURCE: 41 FR 4265, Jan. 29, 1976, unless otherwise noted.

§ 390.1 Scope of the regulations.

(a) *In general*—(1) *Scope*. The regulations prescribed in this part govern the capital construction fund ("fund") authorized by section 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177).

(2) *Establishment of a fund*. A fund is established by an agreement ("agreement"), which is a contract between the party ("party") and the United States.

(3) *Purpose of the fund*. Section 607 provides that any agreement entered into with the Secretary of Transportation must be for the purpose of providing replacement vessels, additional vessels or reconstructed vessels to be built and documented in the United States and operated in the United States foreign, Great Lakes or noncontiguous domestic trade.

(4) *Benefits of a fund*. Section 607 provides for the nontaxability of certain deposits of money or other property placed into a fund established pursuant to an agreement within certain ceilings. These ceilings are equal to:

(i) Earnings or gains realized from the operation of an agreement vessel;

(ii) Net proceeds realized from the sale or other disposition of an agreement vessel or from insurance or indemnification from the loss of an agreement vessel; and

(iii) Earnings from the investment or reinvestment of amounts on deposit in the fund.

(5) *Delegation*. The Secretary of Transportation has delegated the authority for matters relating to the United States Merchant Marine to the Maritime Administrator, Department of Transportation ("Maritime Administrator").

(b) *Act*. For purposes of this part, the term "Act" shall mean the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 through 1249).

(c) *Joint regulations*. For purposes of of this part, the term "joint regulations" shall mean the regulations prescribed by the Secretary of Transportation and the Secretary of the Treasury under section 607 of the Act and published in Title 26, Part 3 of the Code of Federal Regulations (reprinted in Part 391 of this chapter).

(d) *Cross references*. For rules relating to the Federal Income Tax aspects of a fund, see the joint regulations. For rules governing agreements relating to the fisheries of the United States, see the separate Secretary of Commerce regulations published in Title 50, Part 259 of the Code of Federal Regulations.

§ 390.2 Application for an agreement.

(a) *In general*—(1) *Application instructions*. The Maritime Administrator has adopted instructions for making application for an agreement. These instructions are contained in Appendix I to this part.

(2) *General eligibility requirements.* Section 607 of the Act specifies who is eligible for a fund and the application instructions specify what information is required to establish such eligibility. An applicant must:

(i) Be a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802, 803). See Part 355 of this Title for requirements for establishing United States citizenship;

(ii) Own or be the lessee of one or more eligible vessels or share thereof as defined in section 607(k)(1) of the Act, or be party to a contract for the construction of one or more eligible vessels, or share thereof, as defined in paragraph (b) of § 390.5;

(iii) Have a program which furthers the purposes of the Act (see § 390.3 relating to policy considerations) and provides for the acquisition, construction or reconstruction of a qualified vessel, as defined in section 607(k)(2) of the Act. Such provisions state that the vessel will be operated in the United States foreign, Great Lakes or noncontiguous domestic trade as defined in sections 607(k) and 905(a) of the Act; and

(iv) Demonstrate the financial capabilities to accomplish the program.

(b) *Information which may be required in conjunction with the application.* An applicant must provide such facts, documents and materials as the Maritime Administrator may require in considering whether to enter into an agreement. An applicant should be ready to make available such applicable materials, including, but not limited to: Design plans, data concerning the reasonableness of the cost of the program, construction contracts, financial statements, certificates of incorporation, bylaws, articles of partnership, stock ownership data and other information including judgments and pending litigation which would affect the proposed program. The specific information required is set forth in the instructions.

(Approved by the Office of Management and Budget under control number 2133-0027)

[41 FR 4265, Jan. 29, 1976, as amended at 47 FR 25530, June 14, 1982]

§ 390.3 Policy considerations.

(a) *In general.* It is the policy of the United States, as set forth in section 101 of the Act, that for the national defense and the development of its foreign and domestic commerce, the United States shall have a merchant marine: sufficient to carry a substantial portion of its water-borne export and import foreign commerce and to provide shipping service essential for maintaining the flow of such commerce at all times; capable of serving as auxiliaries in time of war or national emergency; owned and operated by United States citizens insofar as practicable and composed of the best equipped, safest and most suitable types of vessels, constructed and documented in the United States and manned with United States citizens.

(b) *Unacceptable programs*—(1) *In general.* The Maritime Administrator will not enter into an agreement where the proposed program is not, in his opinion, in consonance with the policies of the Act.

(2) *Specific unacceptable programs.* The Maritime Administrator will not enter into an agreement where the proposed program is merely to accomplish the following:

(i) Reconstruction of an existing vessel, unless such reconstruction will exceed $1,000,000 in cost, will be capitalized under the Internal Revenue Code of 1954, as amended, and the regulations thereunder and will result in a vessel which is significantly more competitive;

(ii) Acquisition of an existing vessel; or

(iii) Payment of the principal on existing indebtedness.

(3) *Waiver.* The Maritime Administrator may, for good cause shown, waive the provisions of paragraph (b)(2) of this section. For example, the Maritime Administrator may waive the monetary limit in paragraph (b)(2)(i) of this section where the applicant proposes to reconstruct a small vessel.

§ 390.4 Description of the agreement.

(a) *In general.* The agreement consists of a standard part and appended schedules. The standard part of the agreement contains recitals, covenants and warranties which apply to all parties. The appended schedules set forth the particular program of the party and contain other information unique to each agreement. See § 390.6 (relating to administration of the agreement) for procedures and criteria for the modification of schedules.

(b) *Schedule A—Eligible agreement vessels.* Schedule A lists the names of eligible agreement vessels (as defined in § 390.5), whether owned or leased, and the allowable percentage of the depreciation ceiling, if any, available for deposit purposes by the party. See § 390.7 (relating to deposits) for allowable depreciation in the case of leased vessels.

(c) *Schedule B—Program*—(1) *In general.* Schedule B sets forth the program of the party including the cost of the program and the time in which the program shall be accomplished.

(2) *Items in Schedule B.* Schedule B shall contain:

(i) A statement describing each qualified agreement vessel (as defined in § 390.5) to be acquired, constructed or reconstructed. In the case of reconstruction, the statement will include a general description of the work to be performed;

(ii) The anticipated date on which the acquisition, construction or reconstruction of each qualified agreement vessel will commence;

(iii) The anticipated total cost, including any costs which will not be paid from the fund, of the acquisition, construction or reconstruction of each qualified agreement vessel; and

(iv) The amount to be withdrawn from the fund with respect to the acquisition, construction or reconstruction of each qualified agreement vessel.

(3) *Submission of contracts.* When a contract is executed for any acquisition, construction or reconstruction relating to the agreement, such contract shall be submitted within 30 days after execution to the Maritime Administrator who shall then determine whether such undertaking is in accordance with the program set forth in Schedule B.

(d) *Schedule C—Depositories.* Schedule C lists, by name and address, the depositories of the fund. See § 390.7 (relating to deposits).

(e) *Schedule D—Minimum deposits.* Schedule D sets forth the minimum deposits which must be made into the fund. See § 390.7 (relating to deposits) for the procedure in setting minimum deposits.

(f) *Submission of proposed schedules.* An applicant shall submit proposed schedules with his application. The specific information required in such schedules is set forth in the application instructions referred to in paragraph (a)(1) of § 390.2. A sample agreement (standard part and appended schedules) is contained in Appendix II to this part.

§ 390.5 Agreement vessels.

(a) *In general.* Section 607(k) of the Act states the requirements for eligible, qualified and agreement vessels. The rules in this section further define such terms and state how vessels must be listed on Schedules A and B in the agreement.

(b) *Eligible agreement vessels*—(1) *Definition.* An eligible agreement vessel, which may be used to establish ceilings for deposit purposes, is any vessel:

(i) Constructed in the United States, and if reconstructed, reconstructed in the United States; the term "constructed or reconstructed in the United States" includes any vessel which was constructed or reconstructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed or reconstructed outside of the United States for use in the United States foreign commerce pursuant to a contract entered into before April 15, 1970;

(ii) Documented under the laws of the United States;

(iii) Operated in the foreign or domestic commerce of the United States;

(iv) Engaged primarily in the waterborne carriage of men, materials, goods or wares; and

(v) Designated in the agreement as an "eligible agreement vessel."

(2) *Scope of the term "eligible agreement vessel."* For purposes of generating ceilings for deposits under section 607(b) of the Act and the joint regulations the term "eligible agreement vessel" includes any:

(i) Tug or barge;

(ii) Vessels which have been contracted for or are in the process of construction; and

(iii) Share interest in a vessel; the party is considered to have a share interest in an eligible agreement vessel if the party has the right to use the vessel to generate income or a right to the proceeds or a portion of the proceeds from its use even if the party does not have a proprietary interest in the vessel for purposes of State or Federal law.

(3) *Foreign or domestic commerce.* For the purpose of paragraph (b)(1)(iii) of this section the term "foreign or domestic commerce" means the water-borne carriage of men, materials, goods or wares between:

(i) Two points in the United States;

(ii) A point in the United States and a point in a foreign country; or

(iii) Two points in the same foreign country or points in two different foreign countries.

(c) *Qualified agreement vessels*—(1) *Definition.* A qualified agreement vessel which may be acquired, constructed or reconstructed with the aid of qualified withdrawals, is any vessel:

(i) Constructed in the United States, and if reconstructed, reconstructed in the United States; the term "constructed or reconstructed in the United States" includes any vessel which was constructed or reconstructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed or reconstructed outside of the United States for use in the United States foreign commerce pursuant to a contract entered into before April 15, 1970;

(ii) Documented under the laws of the United States;

(iii) Operated in the United States foreign, Great Lakes or noncontiguous domestic trade;

(iv) Engaged primarily in the water-borne carriage of men, materials, goods or wares; and

(v) Designated in the agreement as a "qualified agreement vessel."

(2) *Scope of the term "qualified agreement vessel."* For purposes of making qualified withdrawals under section 607(f) of the Act and the joint regulations the term "qualified agreement vessel" includes any:

(i) Cargo handling equipment which the Maritime Administrator determines will be used primarily on a qualified agreement vessel. Normally any auxiliary equipment which is ordinarily carried from port to port, excluding equipment that needs frequent replacement due to normal wear and tear, and is used in conjunction with the loading or unloading of the vessel is deemed to be cargo handling equipment;

(ii) Ocean-going towing vessel or barge which the Maritime Administrator determines is suitable for the trade in which the party intends to operate such vessel or barge, or any comparable vessel or barge operated on the Great Lakes which is suitable for its intended trade; and

(iii) Proprietary interest in a qualified agreement vessel as, for example, that which may result from a joint venture or partnership.

(3) *Foreign trade.* Foreign trade shall mean the water-borne carriage of men, materials, goods or wares between:

(i) A point in the United States and a point in a foreign country;

(ii) Two points in the domestic trade permitted under the first sentence of section 506 of the Act; or

(iii) Two points in the same foreign country or points in two different foreign countries in the case of liquid and dry bulk cargo carrying services provided the party demonstrates that such operating flexibility is needed to compete with foreign flag vessels in its operations or in competing for charters.

(4) *Great Lakes trade.* Great Lakes trade shall mean the waterborne carriage of men, materials, goods or wares between points on the Great Lakes and their connecting and tributary wa-

terways in the immediate environs of the Great Lakes.

(5) *Noncontiguous domestic trade.* Noncontinguous domestic trade shall mean the water-borne carriage of men, materials, goods or wares between:

(i) The contiguous 48 States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand; and

(ii) Any point in Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States, and any other point in Alaska, Hawaii, Puerto Rico and such territories and possessions.

(6) *Nonqualified operations.* Nonqualified operations for qualified agreement vessels include:

(i) Positioning vessels in support of domestic operations prohibited by section 607 of the Act;

(ii) Use of barges as docks and ramps;

(iii) Except as provided in paragraphs (c)(7) (i) and (ii) of this section:

(A) Foreign-to-foreign trade, consisting of voyages originating and ending in foreign ports, with no intermediate domestic cargo operation, and

(B) Trade from foreign ports to and form U.S. oil rigs in international waters; and

(iv) Ship assist work, including bunkering, in support of contiguous domestic, foreign-flag or U.S.-flag foreign-to-foreign operations.

(7) *Permissible operations.* Permissible operations for qualified agreement vessels include:

(i) Foreign-to-foreign trade in the case of vessels operating as part of U.S.-flag service and carrying cargo originating in or destined for U.S. ports, i.e., U.S.-flag feeder vessels;

(ii) Foreign-to-foreign trade, including the lightering of foreign-flag vessels, in the case of vessels carrying liquid or dry bulk cargoes when the carrier has demonstrated to the Administrator:

(A) The need for such foreign-to-foreign shipments (as required by section 905 of the Act and paragraph (c)(iii) of this section), and

(B) That the proposed cargo would qualify as liquid or dry bulk cargo;

(iii) Ship assist work, including lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic or U.S. foreign trade voyage. In addition, the lightering of foreign-flag vessels in U.S. ports is permitted.

(8) *United States construction.* An agreement vessel is considered to be of United States construction if:

(i) It is built entirely in a shipyard or shipyards within any of the United States and the Commonwealth of Puerto Rico;

(ii) All components of the hull and superstructure are fabricated in the United States; and

(iii) The vessel is assembled entirely in the United States.

(d) *Agreement vessels*—(1) *Definition.* The term "agreement vessel" means any eligible or qualified vessel which is subject to an agreement.

(2) *Scope of the term "agreement vessel."* For purposes of generating ceilings and making qualified withdrawals the term agreement vessel includes containers, trailers or barges which are part of the complement of an agreement vessel. The complement is limited to three times the container, trailer or barge capacity of the vessel, unless the Maritime Administrator shall agree to a different complement.

[41 FR 4265, Jan. 29, 1976, as amended at 55 FR 34928, Aug. 27, 1990]

§ 390.6 Administration of the agreement.

(a) *In general.* The Maritime Administrator will administer and enforce the agreement in a manner which will insure that the fund is properly established, that the assets in the fund are used to accomplish the program and that the party fully complies with all obligations and responsibilities. This section specifies the reports which must be submitted to the Maritime Administrator and sets forth the procedures for administering the agreement.

(b) *Reporting requirements*—(1) *In general.* This paragraph describes the reports required to be submitted to the Maritime Administrator by the party.

(2) *Submission dates.* Reports must be submitted annually, in triplicate, for the party's taxable year not later

than 90 days after the close of each reporting period. An affidavit regarding the operation of qualified agreement vessels as required by paragraph (b)(7) of this section shall be submitted concurrently with each annual report.

(3) *Cumulation.* The annual report submitted following the close of the party's taxable year shall be cumulative for the party's entire taxable year.

(4) *Certification.* The annual report shall be accompanied by an opinion of an independent certified public accountant to the effect that exhibits (see paragraph (b)(5) of this section) composing the accounting have been prepared in accordance with all published orders, rules, regulations and instructions issued or adopted by the Maritime Administrator.

(5) *Format.* The reports shall consist of the following exhibits:

(i) "Exhibit A"—a summary of cash, securities and stock on deposit (showing the adjusted basis for securities and stock), including a subtotal of cash, securities and stock on deposit, net amount of accrued deposits to and accrued withdrawals from the fund and the fund total at the end of the period, and if applicable, a summary of the portion of the fund which represents a "CCF: Security Amount" pursuant to an Agreement Covering the Dual Use of a Capital Construction Fund;

(ii) "Exhibit A-1"—a summary of balances in all cash accounts within the fund at the end of the period;

(iii) "Exhibit A-2"—a summary of the securities and stock within the fund at the end of the period (showing both the adjusted basis and fair market value of each item);

(iv) "Exhibit A-3"—a summary of the accrued deposits to and accrued withdrawals from the fund at the end of the period;

(v) "Exhibit B"—a transcript of transactions occurring within the fund during the period by date;

(vi) "Exhibit C"—a summary showing the opening balance, additions thereto due to deposits to the fund, subtractions therefrom due to withdrawals from the fund, and the closing balance for the period for each of the three separate accounts: ordinary income account, capital gains account and capital account; and

(vii) "Exhibit D"—a summary, by vessel, of the qualified withdrawals made from the fund during the period.

(6) *Sample report.* A sample report is contained in Appendix III of this part.

(7) *Affidavit.* An official of the party who is knowledgeable about the operation of the party's qualified agreement vessels shall submit an affidavit for each taxable year indicating that the party's qualified agreement vessels operated only in qualified trades during such taxable year, or if any such vessel operated in a trade other than a qualified trade, the details of such operation. See § 390.5(c) of this part for a description of what constitutes a qualified trade. A sample affidavit is contained in Appendix V of this part.

(8) *Failure to submit reports.* The failure by a party to make the timely submission of any report or affidavit required by this section shall constitute a material breach of the agreement unless the Maritime Administrator shall determine that such failure was excusable. See § 390.13 (relating to the failure to fulfill a substantial obligation under the agreement).

(c) *Review in the event of changed circumstances.* Each agreement provides that the party shall promptly inform the Maritime Administrator of any change in circumstances which affects its agreement. Such changes may be mere form, such as a change of the party's name, or substantive such as the sale of an eligible agreement vessel. The Maritime Administrator may require a full review of the agreement if in his opinion the changed circumstances materially affect the agreement.

(d) *Modification of agreement*—(1) *In general.* The agreement is subject to modification and amendment by mutual consent. However, except in special circumstances, the Maritime Administrator will not consent to modification or amendment of the standard part of the agreement unless such modification or amendment is of uniform application to similarly situated parties. The Maritime Administrator will normally agree to modification or amendment of the schedules

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subject to the restriction in paragraph (d)(2) of this section.

(2) *Limitations on modification of schedules.* The Maritime Administrator will not agree to modification or amendment of the schedules (as described in § 390.4) when, in his opinion, such modification or amendment delays imposition of Federal Income Tax in a manner not contemplated or authorized by the Act, or if the proposed modification or amendment would not be in consonance with the policies of the Act, these rules and regulations or the joint regulations.

(e) *Fund adjustment upon modification.* Upon application by a party for modification or amendment of the agreement, the Maritime Administrator will determine whether the requested modification or amendment would result in an amount held in the fund in excess of an amount determined to be necessary or appropriate to carry out the program. If such an excess is created in the fund by such modification or amendment, the Maritime Administrator will require a nonqualified withdrawal (as defined in § 390.10) of such excess as a condition to the modification or amendment.

[41 FR 4265, Jan. 29, 1976, as amended at 41 FR 39751, Sept. 16, 1976; 55 FR 34928, Aug. 27, 1990]

§ 390.7 Deposits into the fund.

(a) *In general*—(1) *Source of deposits.* Section 607(b) of the Act provides ceilings within which fund deposits may be made. This section provides rules for the qualification of depositories, timing of deposits, the type of property which may be deposited and the level of deposits.

(2) *Tax aspects of deposits.* For the Federal Income Tax aspects of deposits into a fund, see section 607(d) of the Act and § 3.3 of the joint regulations (§ 391.3 of this chapter).

(b) *Depositories*—(1) *In general.* Section 607(c) of the Act provides that amounts in a fund must be kept in the depository or depositories specified in the agreement and be subject to such trustee or other fiduciary requirements as the Maritime Administrator may specify.

(2) *Qualifications.* The Maritime Administrator has established general qualifications for depositories for all maritime programs authorized under the Act, including the capital construction fund program. The general qualifications are published in Part 351 of this title.

(3) *Fiduciary requirements.* Except in unusual circumstances, the Maritime Administrator will not impose special trustee or other fiduciary requirements upon depositories of a fund. For rules relating to a fund held in trust for investment purposes, see paragraph (h) of this section.

(4) *Type and name of accounts.* Unless otherwise specified in the agreement, the party may select the type or types of accounts in which assets of the fund may be deposited. For example, the party may select a savings account for cash and a trust account for intangible property which is held in the fund. Each account shall be in the name of the party and identified as a capital construction fund account.

(5) *Compensating balances.* The obligation of the assets in the fund as a compensating balance shall constitute a material breach of the agreement.

(c) *Timing of deposits*—(1) *In general.* Section 607(d)(2) of the Act provides that deposits shall not be taxable only when they are made in accordance with the agreement and not later than the time provided in the joint regulations.

(2) *Deposits prior to the time provided in joint regulations.* The party may make deposits for any taxable year prior to the time provided in joint regulations in accordance with the following rules:

(i) Amounts representing taxable income attributable to the operation of agreement vessels for a taxable year may be deposited at any time during such taxable year, and thereafter within the time provided for in the joint regulations, based upon the party's estimated Federal taxable income for such vessels for the entire taxable year;

(ii) Amounts representing net proceeds from the sale or other disposition (including mortgaging) with respect to agreement vessels may be deposited when accrued and thereafter within the time provided for in the joint regulations;

(iii) Amounts representing receipts from the investment or reinvestment of amounts held in a fund may be deposited when accrued and thereafter within the time provided for in the joint regulations; and

(iv) Amounts representing depreciation with respect to agreement vessels for a taxable year may be deposited at any time during such taxable year, and thereafter within the time provided for in the joint regulations.

(3) *Deposits required prior to the time provided in joint regulations.* The Maritime Administrator may require that deposits be made earlier than the latest time provided for in the joint regulations. Generally, the Maritime Administrator will require early deposits only when necessary for the party to meet its agreed upon obligations.

(d) *Types of property which may be deposited into a fund*—(1) *Form of deposits.* Deposits may be made into a fund only in the form of money or intangible property of the type in which assets of the fund may be invested pursuant to section 607(c) of the Act, the Agreement, and these regulations, other than the securities or common and preferred stock of the party or a company related to the party within the meaning of paragraph (d)(2) of this section, except that in the case of deposits representing net proceeds from the sale or other disposition of any agreement vessel to other than a purchaser or transferee related to the party (within the meaning of paragraph (d)(2) of this section) or deposits representing receipts from the investment or reinvestment of amounts held in a fund, any intangible property received may be deposited.

(2) *Related purchaser.* For purposes of this paragraph a purchaser or transferee is a related person to the party if—

(i) The relationship between purchaser or transferee and the party would result in disallowance of losses under section 267 or 707 of the Code, or

(ii) The purchaser or transferee and the party are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(e) *Level of deposits*—(1) *In general.* Section 607(a) of the Act states that the agreement must provide for the deposit in the fund of amounts agreed upon but only to the extent necessary or appropriate to provide for qualified withdrawals to accomplish the program set forth in the agreement.

(2) *Maximum level of deposits.* The party shall not be permitted to deposit more than is necessary to complete its program. See § 390.4 (relating to description of the agreement).

(3) *Minimum level of deposits.* Each agreement shall contain an agreed upon minimum deposit schedule applicable to each three-year period under the agreement. The minimum deposit shall be calculated taking into consideration the scheduling of the anticipated qualified withdrawals. The purpose of the minimum deposit is to insure that the party has made a sufficient commitment to accomplish its program. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(4) *Determination of minimum deposits.* The minimum deposit shall be set by the Maritime Administrator. In determining the minimum deposit, the Maritime Administrator shall give consideration to the anticipated ceilings, financial history, current conditions and future business expectations of the party.

(5) *Waiver of minimum deposit.* The Maritime Administrator shall waive a failure to meet the minimum deposit schedule when the party has deposited all allowable taxable income as specified in Article 5(c) of this agreement attributable to the operation of agreement vessels, net proceeds from all sales or other dispositions of agreement vessels, all receipts from the investment or reinvestment of amounts held in the fund and all earned depreciation on agreement vessels. The Maritime Administrator may also waive the minimum deposit schedule in any case where the party can demonstrate that such deposits will adversely affect its ability to operate its

agreement vessels. In the event of a waiver, the Maritime Administrator may require modification of the schedules. See § 390.6 (relating to administration of the agreement).

(6) *Selection of ceiling.* Except as may be otherwise provided in the agreement or these rules and regulations, the party may choose the ceilings with respect to which deposits are made.

(f) *Allocation of depreciation deposits*—(1) *In general.* Section 607(b)(2) of the Act provides that in the case of a lessee of an eligible agreement vessel the maximum amount which may be deposited with respect to such vessel, under the depreciation ceiling, shall be reduced by any amount which the owner is required or permitted to deposit with respect to such vessel under its depreciation ceiling.

(2) *Method of allocation.* When an agreement vessel is leased, the party's agreement shall fix a percentage of the annual depreciation which the party may deposit. The percentage shall be that agreed upon between the lessors and the lessees unless the Maritime Administrator determines that the agreed upon percentage will result in an accumulation of assets in the fund or funds which is greater than or less than an amount necessary or appropriate to carry out the party's program. See paragraph (e) of this section (relating to level of deposits).

(g) [Reserved]

(h) *Funds held in trust for investment purposes.* A fund may be transferred in whole or in part to the control of an unrelated trustee for investment purposes with the prior written permission of the Maritime Administrator. The Maritime Administrator shall approve such a transfer when:

(1) The trustee meets the requirements for a depository under paragraph (b) of this section;

(2) The trust instrument provides that all investment restrictions stated in section 607(c) of the Act and § 390.8 of these regulations will be observed;

(3) The trust instrument provides that the trustee will give consideration to the party's withdrawal requirements under the agreement when investing the fund;

(4) The trustee agrees to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the fund.

(i) *Federal ship mortgage guarantee or insurance.* A fund may serve in lieu of a Restricted Fund required in connection with Federal Ship Mortgage Guarantee or Insurance under Title XI of the Act and the regulations thereunder upon approval by the Maritime Administrator. Approval by the Maritime Administrator shall be conditioned upon the execution by the party of an agreement, satisfactory in form and substance to the Maritime Administrator, governing the dual use of the fund. Applications for permission to use the fund in this dual capacity should be made in writing to the Secretary, Maritime Administration.

§ 390.8 Investment of the fund.

(a) *In general.* Section 607(c) of the Act provides that assets in the fund must be invested in accordance with certain restrictions. The rules in this section provide for the quality of securities, restrictions on the type of stock in which a fund may invest, related company investments and miscellaneous prohibited activities.

(b) *Permissible investments*—(1) *In general.* The party, at its discretion, or the party's trustee, if established pursuant to paragraph (h) of § 390.7, may invest in the types of securities specified in this paragraph.

(2) *Interest bearing securities.* The party or the party's trustee may invest in any obligation of the United States Government, including any agency or instrumentality thereof, and in the interest bearing securities listed below:

(i) Any obligation of a state or local government, including any agency or instrumentality thereof, or any domestic obligation, which is rated by Moody's Investors Service, Inc., as "Baa" or better or by Standard and Poor's Corporations as "BBB" or better;

(ii) Bankers' acceptances, certificates of deposit, repurchase agreements, and short-term commercial obligations, provided that the latter must be readily marketable and rated not lower than "Prime" by Moody's Investors Services, Inc. or "B" by Standard & Poor's Corp.; and

(iii) Any unsubordinated obligation of an issuer that has any unsecured securities with a credit rating of "Baa" or better if rated by Moddy's Investors Services, Inc., or "BBB" or better if rated by Standard and Poor's Corporation, or by an issuer that has a commercial paper rating not lower than "Prime" by Moody's Investors Service, Inc. or "B" by Standard and Poor's Corporation.

(3) *Guaranteed interest bearing securities.* The party or the party's trustee may invest in interest bearing securities which do not meet the investment criteria set forth in this paragraph (b) *Provided,* That:

(i) The types of interest bearing securities and their terms and conditions are acceptable to the Maritime Administration;

(ii) All principal and interest of the interest bearing securities are unconditionally guaranteed in a form satisfactory to the Maritime Administration and neither the securities nor the obligation to pay interest on the securities is that of a party or a company related to the party within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder; and

(iii) The guarantor, which may be an affiliate of the party, must be either a person that has any unsecured securities with a credit rating of "Baa" or better if rated by Moody's Investors Services, Inc., or "BBB" or better if rated by Standard & Poor's Corporations, or a person whose commercial paper rated not lower than "Prime" by Moody's Investors Services, Inc. or "B" junior securities are rated in the highest grade by Moody's Commercial Paper Service or in one of the two highest grades by Standard & Poor's Corporations, and is otherwise acceptable to the Maritime Administration.

(4) *Common and preferred stocks.* The party or the party's trustee may invest in the following common and preferred stocks:

(i) Stock of domestic corporations which is fully listed and registered at the time of purchase on an exchange registered with the Securities and Exchange Commission as a national securities exchange and which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital; and

(ii) Preferred stock of a corporation if the common stock of that corporation meets the requirements of this paragraph and if the preferred stock of such corporation would meet such requirements but for the fact that such preferred stock cannot be listed and registered as required because it is nonvoting stock.

(c) *Limitations on investments*—(1) *Interest bearing securities.* The value of securities of any one issuer held in the Fund compared to the value of the total assets of the fund shall not exceed 10 percent in the case of nongovernmental securities referred to in paragraph (b)(2)(i) of this section.

(2) *Common and preferred stock.* The value of common and preferred stock of any one issuer held in the fund shall not exceed 25 percent of the value of the total assets of the fund. In no case may more than 60 percent of the value of the total assets of the fund be invested in common or preferred stock.

(3) *Margin or short sale.* No interest bearing securities or common and preferred stock shall be purchased on margin or be sold short for the account of a fund.

(4) *Related company investments.* Funds shall not be invested in the interest bearing securities or common and preferred stock of the party or of a company related to the party within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder.

(5) *Subsequent investments.* If at any time the fair market value of the interest bearing securities or common and preferred stock in the fund is more than the limitations stated in this paragraph (c), any subsequent deposit to or withdrawal from the fund or investment made within the fund shall be made in such a way as tends to restore the fund to a posture in which the fair market values of such securities or stock do not exceed such limitations. Values of such securities

and stocks shall be the fair market values as determined by the party on the last day of each semi-annual and annual reporting period.

[41 FR 4265, Jan. 29, 1976, as amended at 42 FR 34882, July 7, 1977; 43 FR 51636, Nov. 6, 1978; 55 FR 34928, Aug. 27, 1990]

§ 390.9 Qualified withdrawals.

(a) *In general*—(1) *Defined.* In accordance with section 607(f) of the Act, qualified withdrawals are those made from a fund in accordance with the agreement, but only if they are for:

(i) The acquisition, construction or reconstruction of a qualified agreement vessel;

(ii) The acquisition, construction or reconstruction of barges or containers which are part of the complement of a qualified agreement vessel; or

(iii) The payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified agreement vessel or a barge or container which is part of the complement of a qualified agreement vessel.

(2) *Tax aspects of a qualified withdrawal.* For the tax aspects of a qualified withdrawal, see section 607(g) of the Act and § 3.6 of the joint regulations (§ 391.6 of this chapter).

(b) *Purpose of qualified withdrawals*—(1) *Acquisition of qualified agreement vessels.* (i) The term "acquisition of a qualified agreement vessel" shall mean any transaction, including a corporate merger, where the party obtains a proprietary interest in an existing vessel and such a proprietary interest will, in the opinion of the Maritime Administrator, further the purposes and policies of the Act. See § 390.3 (relating to policy considerations).

(ii) Qualified withdrawals for the acquisition of a qualified agreement vessel shall only be allowed for amounts determined by independent appraisal to be the fair market value of the vessel, at the time of the acquisition, or the actual cost directly allocable to acquiring only the vessel, whichever is less.

(2) *Construction of qualified agreement vessels.* The term "construction of a qualified agreement vessel" shall mean the construction of a vessel with the aid of qualified withdrawals.

(3) *Reconstruction of qualified agreement vessels.* Once an agreement has been entered into, the term "reconstruction of a qualified agreement vessel" shall mean any improvement to an existing vessel which increases the vessel's competitiveness and involves an aggregate sum in excess of $100,000. The Maritime Administrator may waive the monetary limit in this subparagraph in the case of small vessels.

(4) *Payment of principal on indebtedness.* Section 607(f)(1)(C) provides that any indebtedness which the party proposes to pay through qualified withdrawals must be shown to the satisfaction of the Maritime Administrator to have been incurred in direct connection with the acquisition, construction or reconstruction of a qualified agreement vessel. The fact that indebtedness is secured by an interest in a qualified agreement vessel is insufficient by itself to demonstrate the direct connection. It is not necessary that the lien or mortgage securing the indebtedness be on the vessel. For example, if the party mortgages an office building in order to finance the construction of a vessel, payments of principal on the mortgage may be made with qualified withdrawals.

(c) *Limitations on qualified withdrawals*—(1) *Capitalized costs requirement.* All qualified withdrawals must be for costs which are capitalized under the Internal Revenue Code of 1954, as amended, and the regulations thereunder and so reported on the party's Federal Income Tax return.

(2) *Executed contract requirement and reimbursement of general funds.* Qualified withdrawals may be made for the purpose of reimbursing general funds subject to the following limitations:

(i) Qualified withdrawals may not be made until a construction, reconstruction or acquisition contract is executed. However, the party may reimburse its general funds for expenditures applicable to the construction, reconstruction or acquisition contract which occurred prior to the date of contracting if such reimbursements are made within 120 days from the date of such contracting.

(ii) The party may also reimburse its general funds for expenditures which could have been paid initially by a qualified withdrawal, if such reimbursements are made within 120 days of such expenditure.

(iii) The party may reimburse its general funds for expenditures made prior to the time an agreement or amendment is entered into, but after the party has made application therefor, if such expenditures would otherwise qualify for reimbursement pursuant to paragraphs (c) (3) (i) and (ii) of this section but for the fact that an agreement or amendment has not been executed, and if such reimbursement is effected within 120 days of the execution of an agreement or amendment.

(3) *Prepayment of indebtedness.* The party shall not prepay principal on indebtedness with qualified withdrawals without the prior written consent of the Maritime Administrator.

(4) *Qualified withdrawals paid to related persons.* A withdrawal, including payments for indebtedness, paid to a related person, within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder, shall not constitute a qualified withdrawal unless the Maritime Administrator determines that no portion of such payment constitutes a dividend, a return of capital or a contribution of capital under the Internal Revenue Code. Transactions which include payments to a related person, will be approved if the cost of the item to be acquired, constructed or reconstructed through qualified withdrawals is or was at the time of the acquisition, construction or reconstruction its fair market value. The party must obtain the prior written permission of the Maritime Administrator before any qualified withdrawals may be paid to a related person. Any such withdrawal prior to approval shall be a nonqualified withdrawal.

(d) *Permission to make qualified withdrawals.* Once a program has been approved, prior approval of the Maritime Administrator is not required for specific qualified withdrawals except as provided in paragraphs (c) (4) and (c) (5) of this section. However, the Maritime Administrator will give prior approval to qualified withdrawals upon written request.

[41 FR 4265, Jan. 29, 1976, as amended at 55 FR 34929, Aug. 27, 1990]

§ 390.10 Nonqualified withdrawals.

(a) *In general*—(1) *Defined.* Any withdrawal from a fund which is not a qualified withdrawal is a nonqualified withdrawal.

(2) *Tax aspects of a nonqualified withdrawal.* For the tax aspects of a nonqualified withdrawal, see section 607(h) of the Act and § 3.7 of the joint regulations (§ 391.7 of this chapter).

(b) *Permission required*—(1) *In general.* The prior written permission of the Maritime Administrator is required before a nonqualified withdrawal may be made.

(2) *Failure to secure permission.* A nonqualified withdrawal made without the prior written permission of the Maritime Administrator shall constitute a material breach of the agreement unless the Maritime Administrator shall determine that failure to obtain prior written consent was excusable. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(3) *Types of nonqualified withdrawals which will be permitted.* Generally, the Maritime Administrator will give permission to make nonqualified withdrawals when:

(i) The party has incurred operating losses from the operations of agreement vessels which have impaired his working capital and it becomes necessary to reimburse its general funds to the extent of such losses;

(ii) The party desires to make an expenditure for research, development or design and such an expenditure is incident to new and advanced ship design, machinery and equipment;

(iii) The withdrawal would be a qualified withdrawal except for the fact that there is no tax basis left that can be reduced; or

(iv) The party demonstrates, to the satisfaction of the Maritime Administrator, that it cannot fulfill its program due to circumstances beyond its control or due to a change in circumstances which makes the completion of its program economically unfeasible.

§ 390.11 Sale or other disposition of agreement vessels.

(a) *Eligible agreement vessels.* The sale or other disposition (including mortgages) of eligible agreement vessels shall not require prior approval of the Maritime Administrator, but shall require written notification within 10 days after the sale or other disposition. Such notification shall include a description of the transaction, the identity of the transferee, the proceeds to be realized, the date of the transaction and whether the proceeds will be deposited into the fund.

(b) *Qualified agreement vessels*—(1) *In general.* If a qualified agreement vessel whose basis has been reduced through the application of qualified withdrawals is sold or disposed of (including mortgaged) within one year, interest on the amount of gain attributable to the basis reduction shall attach if the Maritime Administrator determines that the disposition was contrary to the policies of the Act, the joint regulations or these regulations. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(2) *Period of one year defined.* The one-year period shall mean 365 days from the date of final delivery from the shipyard in the case of construction or reconstruction and 365 days from the date of first loading of the vessel in the case of an acquisition.

(3) *Prior approval.* The party shall obtain the written approval of the Maritime Administrator prior to the sale or other disposition (including mortgage) of a qualified agreement vessel.

(4) *Deposit requirement.* The Maritime Administrator will not normally require the deposit of the net proceeds from the sale of a qualified agreement vessel but shall require the deposit of the net proceeds from the mortgage of a qualified agreement vessel for which qualified withdrawals from the fund have been made.

(c) *Sale or other disposition of agreement vessels to related persons*—(1) *In general.* Section 3.2(c)(4) of the joint regulations (§ 391.2(c)(4) of this chapter) requires that the net proceeds from the sale or other disposition of an agreement vessel shall be the fair market value of the vessel when the party and the purchaser are owned or controlled directly or indirectly by the same interests within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder. In such case, the party shall furnish data to establish that the amount realized or to be realized is the fair market value.

(2) *Data to be submitted.* Sufficient data must be submitted to support a determination by the Maritime Administrator of the fair market value including the original cost of the vessel, dates of original delivery, acquisition and reconstruction, as applicable, cost of improvements, sales price, costs of sale and any other information which would assist in making such determination.

§ 390.12 Liquidated damages.

(a) *Liquidated damages*—(1) *In general.* Each agreement entered into under section 607 of the Act shall contain a liquidated damages provision for the purpose of placing the party into its prefund position for each day a qualified agreement vessel is operated in violation of the geographic trading restrictions contained in the Act and § 390.5. The liquidated damages provision requires that the party repay the time value of the deferral of Federal Income Tax which the party has received.

(2) *Calculation of liquidated damages.* The liquidated damages specified in in this paragraph shall be calculated as follows:

(i) With respect to each vessel operated in violation of the applicable trading restrictions, add (A) the sum of qualified withdrawals for the vessel which have been made from the ordinary income and capital gain accounts to the date of breach, and (B) the amount of any unpaid principal on indebtedness for the vessel which may be paid from the fund less any portion of such amount which by operation of law must be withdrawn from the capital account balance on deposit in the fund on the date of the breach.

(ii) Multiply the total derived in paragraph (a)(2)(i) of this section by an assumed effective Federal Income Tax rate of 30 percent;

(iii) Compound the product derived in paragraph (a)(2)(ii) of this section at 8 percent annually (A) for 20 years, if the duration of the trading restrictions applicable to the vessel is 20 years in accordance with paragraph (b)(1)(i) of this section; (B) for 10 years, if the duration of the trading restrictions applicable to the vessel is 10 years in accordance with paragraphs (b)(1)(ii), (iii) or (iv) of this section; or (C) for 5 years, if the duration of the trading restrictions applicable to the vessel is 5 years in accordance with paragraph (b)(1)(iv) of this section.

(iv) Subtract the amount calculated in paragraph (a)(2)(ii) of this section from the product derived in paragraph (a)(2)(iii) of this section;

(v) Divide the result derived in paragraph (a)(2)(iv) of this section by 2; and

(vi) Divide the result derived in paragraph (a)(2)(v) of this section (A) by 7300 (days) if the duration of the trading restrictions applicable to the vessel is 20 years; (B) by 3650 (days) if the duration of the trading restrictions applicable to the vessel is 10 years; or (C) by 1825 (days) if the duration of the trading restrictions applicable to the vessel is 5 years.

(3) *Formula.* The calculation of the daily rate of liquidated damages may be reduced to the following formula:

$$X=[I(QT)-S]/2D$$

Where:

X=Daily rate in dollars.

Q=Summation of qualified withdrawals, other than withdrawals from the capital account, permitted from the fund.

T=Assumed effective tax rate of 30 pct.

S=Tax savings=$(Q)(T)$.

I=Discount factor to be applied for vessels subject to 20-yr trading restriction=4.660957; for vessels subject to 10-yr trading restriction=2.158925; for vessels subject to 5-yr trading restriction=1.469328 (value of $1 compounded at 8 pct for 20, 10, and 5 yr respectively).

D=7,300 d for vessels subject to 20-yr trading restriction; 3,650 d for vessels subject to 10-yr trading restriction; 1,825 d for vessel subject to 5-yr trading restriction.

The formula may be further reduced to:

$$X=0.5491436Q/7,300$$

for vessels subject to 20 year trading restriction,

$$X=0.1738388Q/3,650$$

for vessels subject to 10 year trading restriction,

$$X=0.0703992Q/1,825$$

for vessels subject to 5 year trading restriction.

(4) *Example.* The provisions of paragraphs (c) (2) and (c) (3) of this section may be illustrated by the following example:

Assume that a qualified agreement vessel has been constructed with qualified withdrawals from a fund. The total cost was $20 million of which $6 million was withdrawn from the fund for a downpayment. Pursuant to the agreement, an additional $4 million may be withdrawn from the fund to pay principal on indebtedness. Thus, $10 million has been or may be withdrawn from the fund with respect to this vessel. The daily rate of liquidated damages would be:

$$X=0.5491436\,(10,000,000)/7300 \text{ or}$$
$$X=\$752.25$$

(5) *Payment of liquidated damages.* The amount derived in paragraph (a)(2) of this section shall be the daily rate of liquidated damages and shall be paid to the Maritime Administrator, for deposit in the Treasury of the United States, within 30 days from the date the qualified agreement vessel first entered the prohibited geographic trade and shall be for all amounts owing from such date thereafter until the date payment is due. Payments, for continuing breaches, shall be made at 30 day intervals.

(6) *Other remedies.* Nothing in this paragraph shall diminish the Maritime Administrator's other remedies for breach under the Act, the rules and regulations or the agreement.

(b) *Duration of restrictions*—(1) *In general.* The geographic trading restrictions in the Act and § 390.5 and the liquidated damages provision shall apply for:

(i) 20 years from the date of final delivery on qualified agreement vessels constructed or acquired within one year of final delivery from the shipyard with the aid of qualified withdrawals;

(ii) 10 years from the date of completion of reconstruction for qualified agreement vessels reconstructed with the aid of qualified withdrawals;

(iii) 10 years from the date of acquisition of qualified agreement vessels acquired with the aid of qualified withdrawals more than one year after final delivery of the vessel from the shipyard;

(iv) 10 years from the date of the first qualified withdrawal from the fund to pay the existing indebtedness on a qualified agreement vessel which was included in Schedule B for that purpose unless the qualified vessel was more than fifteen years old on the date of the first qualified withdrawal in which case the period shall be five years.

(2) *Transfer of qualified agreement vessel.* In the event a qualified agreement vessel is sold or transferred to another person (see paragraph (b)(3) of § 390.11 requiring prior permission), the transferor shall require in the bill of sale that the transferee agree with the Maritime Administrator to comply with the geographic trading restrictions and to pay liquidated damages for any breach of such agreement that occurs after the transfer. The transferor shall remain liable for any violations that occurred prior to the approved transfer. However, in the case of a like kind exchange which is governed by section 1031 of the Internal Revenue Code of 1954, as amended, if the vessel acquired by the party has an economic life equal to or greater than the length of the geographic trading restrictions that remain applicable to the transferred vessel, the acquired vessel shall be deemed to be a qualified agreement vessel and the geographic trading restrictions of the transferred vessel shall attach to the acquired vessel.

[41 FR 4265, Jan. 29, 1976 as amended at 42 FR 34283, July 5, 1977]

§ 390.13 Failure to fulfill a substantial obligation under the agreement.

(a) *In general.* Section 607(f)(2) of the Act requires the Maritime Administrator to determine whether there has been a failure to fulfill a substantial obligation under an agreement.

(b) *Contracting Officer's tentative conclusion*—(1) *Notice.* If the Contracting Officer tentatively concludes that any substantial obligation under the agreement, the joint regulations or these regulations is not being fulfilled by the party he shall serve written notice of his tentative conclusion upon the party by certified mail with return receipt requested. The notice shall contain the following information:

(i) A statement of the grounds upon which the tentative conclusion is based;

(ii) The amount the Contracting Officer tentatively concludes should be withdrawn as a nonqualified withdrawal; and

(iii) A statement that the tentative conclusion shall become a final decision unless the party requests, within 30 days, an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion.

(2) *Effect of notice.* The notice of the tentative conclusion shall become a final decision as described in paragraph (d)(1) of this section, unless within 30 days of receipt of such a written notice the party by personal delivery or by certified mail, requests the opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, in which case no further withdrawals from the fund, without the written prior approval of the Contracting Officer, shall be made by the party until a binding final decision is reached by the Maritime Administration.

(c) *Basis for Contracting Officer's tentative conclusion.* In determining whether a party has not fulfilled a substantial obligation under its agreement, the Contracting Officer shall consider among other things:

(1) The effect of the party's action or omission upon its ability to either

carry out the purpose of the fund, accomplish its Schedule B program (see §390.4(c)) or satisfy its minimum level of deposits in Schedule D (see §390.4(e)).

(2) Whether the party has made material misrepresentations in connection with its application, agreement or any modification or amendment thereto or has failed to disclose material information that may affect its agreement or the purpose of the fund.

(d) *Contracting Officer's decision and appeals to the Maritime Administrator*—(1) *Where there has not been a request to cure or to be heard.* If the Contracting Officer issues a written notice under paragraph (b) of this section and the party does not request within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the Contracting Officer's tentative conclusion shall become the final decision, which decision shall be final, conclusive and binding upon the party, and no appeal therefrom shall be taken to the Maritime Administrator.

(2) *Where there has been a request to cure or to be heard.* If the Contracting Officer issues a written notice under paragraph (b) of this section and the party requests within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the party shall be offered such an opportunity. Request to cure must include a proposal to cure the breach. If the Contracting Officer accepts the party's proposal to cure its breach, then such determination shall be final. A party requesting to be heard and offer evidence in opposition to the Contracting Officer's tentative conclusion shall be permitted to submit, in writing, any information, evidence or argument within a period set by the Contracting Officer after considering the wishes of the party. The Contracting Officer shall reduce his final decision to writing and furnish the party a copy, by certified mail—return receipt requested, which decision shall be final and conclusive and shall bind the party unless within 30 days of receipt of the decision the party appeals from said decision by personal delivery or by certified mail to the Maritime Administrator with notice to the Contracting Officer.

(e) *Appeals to the Maritime Administrator.* Appeals with a request for a hearing on the record, if desired, are to be transmitted pursuant to paragraph (d) of this section and are to be addressed to the Maritime Administrator. Upon the filing of an appeal, the Contracting Officer shall transmit the entire record and a copy of his final decision to the Maritime Administrator. If a request for a hearing on the record is granted, the Maritime Administrator shall proceed pursuant to the Rules of Practice and Procedure in Part 201 of this title. The decision of the Maritime Administrator on any question of fact shall be final, conclusive and binding upon the party unless determined by a court of competent jurisdiction to be fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence.

§ 390.14 Departmental reports and certification.

(a) *In general.* For each calendar year, the Secretary of Transportation shall provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds under the Secretary of Transportation's jurisdiction.

(b) *Content of reports.* Each report shall set forth the name and taxpayer identification number of each person:

(1) Establishing a capital construction fund during such calendar year;

(2) Maintaining a capital construction fund as of the last day of such calendar year;

(3) Terminating a capital construction fund during such calendar year;

(4) Making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(5) With respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

[55 FR 34929, Aug. 27, 1990]

APPENDIX I TO PART 390— U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS

INSTRUCTION REGARDING APPLICATION FOR A CAPITAL CONSTRUCTION FUND

An application for a capital construction fund under section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177), the Rules and Regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation (26 CFR Part 3 and reprinted in 46 CFR Part 391, the "Joint Regulations") and individually by the Secretary of Transportation (46 CFR Part 390, the "SOC Regulations") shall be prepared and submitted in the form specified by these instructions.

The application must be legible and shall be submitted in six (6) complete sets, including the required Schedules and Exhibits. The application shall be filed with the Secretary, Maritime Administration, Washington, DC 20590. Three of these sets must be duly executed and certified by the Applicant. The name of the Applicant shall be shown on all accompanying papers for identification.

All questions contained in the application must be responded to; if a question is not applicable the respondent should so state. Additional information may be requested if such information is necessary to aid the Contracting Officer in making a determination to enter into a Capital Construction Fund Agreement.

U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

APPLICATION FOR ESTABLISHMENT OF A CAPITAL CONSTRUCTION FUND UNDER SECTION 607, MERCHANT MARINE ACT, 1936, AS AMENDED

The undersigned ———— ("Applicant"), a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, hereby applies under section 607 of the Merchant Marine Act, 1936, as amended ("Act"), the Rules and Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Transportation ("Joint Regulations") and individually by the Secretary of Transportation ("SOC Regulations") to establish a Capital Construction Fund to aid in the acquisition, construction or reconstruction of a qualified vessel, the acquisition, construction or reconstruction of barges, containers or trailers which are part of the complement of a qualified vessel and the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge, container or trailer which is part of the complement of a qualified vessel. The fund hereby applied for will be effective for deposits relating to the taxable year beginning ————, 19— and ending ————, 19—, and for subsequent taxable years. In support of this application, the Applicant submits the following information:

I. *As to the identity of and other General Information of the Applicant* (the following data is required to prove the Applicant's citizenship to the satisfaction of the Secretary; also see 46 CFR Part 355):

A. *Natural Persons.* If the Applicant is a natural person, the following identifying information should be submitted:

1. Name.
2. Address.
3. Date of birth.
4. Place of birth.
5. Citizenship.
6. Principal place of business.
7. Trade name under which business is conducted.

B. *Partnerships, Associations, Unincorporated Companies.* If the Applicant is a partnership, association, or unincorporated company, the following identifying information should be submitted:

1. Name of partnership, association, or unincorporated company.
2. Business address.
3. Date and place of organization.
4. Name of all partners (general, limited and special) of the partnership or trustees and holders of beneficial interests in the association or company.
5. Share owned by each partner, trustee, or beneficial owner.
6. Date of birth of each.
7. Place of birth of each.
8. Citizenship of each.

C. *Incorporated Companies.* If the Applicant is an incorporated company, the following identifying information should be submitted:

1. Exact name of Applicant.
2. State in which incorporated and date of incorporation.
3. Address of principal executive offices, and of important branch offices, if any.
4. The following information with respect to each officer and director of the corporation:
   a. Name and address.
   b. Office.
   c. Citizenship.
   d. Capital shares owned (specify type, whether voting or non-voting and percentage of total of each type issued if five percent (5%) or more).
5. The name, address and citizenship of and number of capital shares owned by each person not named in answer to item 4, owning of record, or beneficially if known,

five percent (5%) or more of the issued capital shares of any class stock of the Applicant.

6. A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights in any shares of the Applicant are owned, controlled, or exercised, or whereby the control of the Applicant is in any way held or exercised by any person not the holder of legal title to such shares. (Give the name, address, citizenship, and business of any such person, and, if not an individual, include the form of organization.)

II. *As to the Business and Affiliations of the Applicant.* A. A brief description of the principal business activities during the past five years of the Applicant and of any predecessor or predecessors of the Applicant; if any change is presently contemplated, a brief statement of the nature and circumstances thereof.

B. A list of all companies or persons that are related within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder ("related companies") or that directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with the Applicant, together with an indication of the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart.

C. A statement whether during the past 5 years the Applicant or any predecessor or related company has been in bankruptcy or in reorganization under II-B of the Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether any substantial property of the Applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

D. A statement of whether the Applicant or any predecessor or related company is now or during the past 5 years was involved in any litigation or subject to any outstanding judgments. If so, give details.

E. Describe any contemplated plan of reorganization or recapitalization involving new capital, the consolidation or mergers of the Applicant with related or other companies, debt elimination, or other changes or modifications in the corporate or individual structure, and indicate by appropriate financial statements the anticipated results thereof.

III. *As to the Management of the Applicant.* A. A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the Applicant.

B. The name and address of each other organization engaged in business activities related to those carried on or to be carried on by the Applicant with which any person named in the answer to the preceding item has any present business connection; the name of each such person, and briefly the nature of such connection.

IV. *Description of Vessels, Barges, Containers or Trailers which Applicant Proposes to be Incorporated in Capital Construction Fund Agreement for the Purpose of Making Deposits.* Vessels must be eligible vessels as that term is defined in section 607(k) of the Act and § 390.5(b) of the SOC Regulations. Undocumented barges, containers or trailers must be part of the complement of an eligible vessel as that term is defined in section 607(b) of the Act and § 390.5(d) of the SOC Regulations:

A. *Vessels.* Provide in a tabular form headed "Schedule A" (see prescribed format in Appendix II) the vessels owned or leased by the Applicant which the Applicant proposes to be designated as "Eligible Agreement Vessels" for the purposes of making deposits into a Capital Construction Fund pursuant to the provisions of section 607 of the Act, giving:

a. Name and official number.

b. Specific type.

c. Capacity (tons of cargo, number of containers, barges, etc.).

d. Whether owned or leased, and if leased the owner and the owner's address.

e. Date and place of construction.

f. If reconstructed, date of redelivery and place of reconstruction.

g. Date documented under laws of the United States.

h. Area of operation.

i. Full details concerning the service in which the Applicant operates or will operate each vessel; if the vessel is used for multiple purposes indicate the percentage of time in which the vessel is engaged in each service.

B. *Barges, Containers, and Trailers.* Provide in a tabular form headed "Schedule A" (see prescribed format in Appendix II) the barges, containers, and trailers owned or leased by the Applicant which the Applicant proposes to be incorporated in an Agreement for purposes of making deposits into a Capital Construction Fund pursuant to the provisions of section 607 of the Act, giving:

a. Number of barges, containers or trailers which are part of the complement of an eligible vessel; name and official number of barges which are not a part of the complement of an eligible vessel.

b. Specific type.

c. Size or capacity.

d. Whether owned or leased, and if leased the owner and the owner's address.

e. Date and place of construction.

f. If reconstructed, date of redelivery and place of reconstruction.

g. Date documented under the laws of the United States.

h. Area of operation.

i. The vessel or vessels for which the barges, containers and trailers are part of the complement; full details concerning the service in which the Applicant operates or will operate each barge which is not a part of a complement.

V. *Purposes for which Qualified Withdrawals are Proposed.* Applicant is advised that information furnished in response to sections A, B, C and D of this item is for the purpose of inducing the United States to enter into an agreement to establish a Capital Construction Fund pursuant to section 607 of the Act. In connection therewith attention is directed to section 607(f)(2) of the Act which states, "Under joint regulations, if the Secretary of Transportation determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal." Also see § 390.13 of the SOC Regulations.

A. *Acquisition or Construction of Vessels.* Provide in form headed "Schedule B" (see prescribed format in Appendix II) the proposed program for the acquisition or construction of vessels, giving:

a. Number, type and commercial characteristics of vessels to be acquired or constructed.

b. Whether vessels will be replacements or additions, and if replacements identify vessels to be replaced.

c. Projected date of acquisition or award of construction contract.

d. Projected date of commencing operations.

e. Estimated total cost.

f. Method by which estimated total cost of project was determined.

g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.

h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.

i. Intended area of operation.

j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

B. *Acquisition or Construction of Barges, Containers and Trailers.* Provide in a form headed "SCHEDULE B" (see prescribed format in Appendix II) the proposed program for acquisition or construction of barges, containers and trailers giving:

a. Number, type and size of barges, containers and trailers.

b. Whether barges, containers and trailers will be replacements or additions, if replacements, identify barges, containers or trailers to be replaced.

c. Projected date of acquisition or award of construction contract.

d. Projected date of introduction into service.

e. Estimated total cost.

f. Method by which estimated total cost of project was determined.

g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.

h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund including anticipated terms of such financing.

i. Identification of vessels for which the barges, containers and trailers will be part of the complement, and the vessel's area of operation. In the case of barges which are not a part of the complement of a vessel provide the barges' intended area of operation.

j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate the approximate percentage of time in which the barge will be engaged in each service.

C. *Reconstruction of Vessels.* Provide in a form headed "SCHEDULE B" (see prescribed format in Appendix II) the proposed program for reconstruction of vessels, giving:

a. Identification of vessels to be reconstructed.

b. Nature and extent of proposed reconstruction.

c. Projected date of award of reconstruction contract.

d. Projected date of commencing operations with reconstructed vessels.

e. Estimated total cost.

f. Method by which estimated total cost of project was determined.

g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.

h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.

i. Intended area of operation.

j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

D. *Reconstruction of Barges, Containers and Trailers.* Provide in a form headed "SCHEDULE B" (see prescribed format in Appendix II) the proposed program for reconstruction of barges, containers and trailers, giving:

a. Number, type and size of barges, containers and trailers.

b. Nature and extent of proposed reconstruction work.

c. Projected date of award of reconstruction contract.

d. Projected date of completion of reconstruction work.

e. Estimated total cost.

f. Method by which estimated total cost of project was determined.

g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.

h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawal from the Capital Construction Fund including anticipated terms of such financing.

i. Identification of vessels for which the barges, containers, and trailers will be part of the complement, and the vessel's area of operations. In the case of barges which are not a part of the complement of a vessel provide the barges' area of operation.

j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate approximate percentage of time in which the barge will be engaged in each service.

E. *Payment of Principal on Existing Indebtedness Incurred in Connection with the Acquisition, Construction or Reconstruction of a Qualified Vessel or a Barge, Container or Trailer which is Part of the Complement of a Qualified Vessel.* Provide in a form headed "Schedule B" (see prescribed format in Appendix II) the proposed program for payments of principal on existing indebtedness incurred in connection with the acquisition, construction, or reconstruction of qualified vessels, barges, containers, or trailers, giving:

a. Name, official number or other identifying information for the vessel, barge, container, or trailer.

b. Whether the debt was incurred for acquisition, construction or reconstruction, demonstrating evidence of a direct connection between the qualified vessel and the debt which was incurred.

c. The aggregate principal balance of such indebtedness as of the date of this application.

d. The dates and amounts of payments of principal to liquidate the outstanding debt in accordance with the applicable loan agreements or other documents.

VI. *As to the Depository to be Used for the Capital Construction Fund.* Provide in a tabular form headed "Schedule C" (see prescribed format in Appendix II) the full name and complete address of the financial institution which will act as depository. Indicate the type of account, i.e., checking, savings, trust, in which the fund will be held.

VII. *Proposed Schedule of Minimum Amounts Available for Deposit into the Capital Construction Fund.* Provide in a tabular form headed "Schedule D" (see prescribed format in Appendix II) a proposed program for deposits into the Capital Construction Fund commencing with the beginning of the first taxable year for which the Agreement applies. The applicant is advised that the purpose of Schedule D is to insure that a sufficient commitment has been made to accomplish the objectives contained in Schedule B. Minimum annual deposits are not required, but a minimum amount must be deposited for each 3 year period under the Agreement. For each such 3 year period of the proposed Schedule D the Applicant will indicate not only the minimum amount to be deposited, but also the source of such deposit, giving amounts expected to be derived from:

a. Ordinary income attributable to the operation of agreement vessels.

b. Net proceeds from the sale or other disposition of agreement vessels.

c. Receipts from the investment or reinvestment of amounts held in the fund.

d. Earned depreciation on agreement vessels.

VIII. *Financial Statements and Reports of the Applicant Including Predecessors. A. Financial Statements.* For each of the past three fiscal years provide:

1. Statements of Financial Conditions.
2. Statements of Operations.
3. Statements of Retained Earnings.

B. *Reports.* If the books of the Applicant were audited by an independent certified public accountant copies of the public accountant's reports shall be submitted for each of the past three fiscal years.

IX. *As to Exhibits Furnished.* At the time of original filing, the following exhibits, properly identified, shall be furnished:

Exhibit I—A copy of the Certificate of Incorporation of the Applicant or other organization papers including all amendments thereto presently in effect.

Exhibit II—A copy of the By-Laws or other governing instruments of the Applicant, including all amendments thereto presently in effect.

Exhibit III—Such other financial statements, copies of contracts, schedules and other required data which the Applicant desires to incorporate by reference.

X. A statement of any additional information which, in the opinion of the Applicant, is necessary to make the application and attached exhibits true and complete.

XI. A specific written request, pursuant to 5 U.S.C. 552(b)(4), must accompany the application if the Applicant wishes certain trade secrets, financial and commercial information contained in this application to be withheld from disclosure. The Maritime Administrator, Department of Transportation will endeavor to respect such a request, acting within the limits of the applicable provisions of the Freedom of Information Act.

State of ———— County of ————

ss:

Dated ——————————, 19——

Name of Applicant——————————

By ——————————

Name and Title

I, ————, do certify that I am the (Title of Office) of (Exact Name of Applicant), the Applicant on whose behalf I have executed the foregoing application; that the Applicant is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802); that this application is made for the purpose of inducing the United States of America to permit the Applicant, pursuant to section 607 of the Merchant Marine Act, 1936, as amended, the Joint Regulations and the SOC Regulations to establish a Capital Construction Fund for the purposes set forth in subsection 607(f) of the Act; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

——————————

Subscribed and sworn to before me, a ————in and for the State and County above named, this ————day of ——, 19——.

——————————

My Commission expires ————.

NOTE: The United States Criminal Code makes it a criminal offense to knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device, a material fact from, or make any false, fictitious or fraudulent statements or representations or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement to, any department or government agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001).

Appendix II to Part 390—Sample Capital Construction Fund Agreement

[Contract No. MA/CCF–]

CAPITAL CONSTRUCTION FUND AGREEMENT WITH

This Capital Construction Fund Agreement ("Agreement"), made on the date hereinafter set forth, by and between the United States of America, represented by the Maritime Administrator, Department of Transportation ("Maritime Administrator"), and ————, a corporation organized and existing under the laws of the State of ———— ("Party"), a citizen of the United States of America.

Whereas: 1. The Party has applied for the establishment of a Capital Construction Fund ("Fund") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The Party is the owner or lessee or has contracted for the construction of one or more eligible vessels as defined in section 607(k) of the Act, which vessels are listed in Schedule A hereof;

3. The Party has a program for the construction or acquisition of qualified agreement vessels as defined in section 607(k) of the Act, which program is described in Schedule B hereof;

4. The Maritime Administrator and the Party desire to enter into an Agreement for the purpose of providing replacement vessels, additional vessels, or reconstruction vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade;

5. The Maritime Administrator has determined that the Party qualifies for an Agreement under the Act; and

6. The Maritime Administrator has authorized the award of an Agreement upon the terms and conditions set forth herein subject to the Act, as it may be amended from time to time, and such rules and regulations as shall be prescribed by the Secretary of Transportation or his delegate, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act ("rules and regulations").

Now, therefore in consideration of the premises the Maritime Administrator and the Party hereby agree as follows:

1. *Establishment of a Fund:* (A) A Fund is hereby established for the purposes set forth in Article 2 hereof, pursuant to such terms and conditions as shall be prescribed in this Agreement, the Act, or the rules and regulations.

(B) The Fund shall be established in the depositories listed in Schedule C hereof.

2. *Purpose of the Fund:* The Fund established hereunder shall be utilized to provide for replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade, and to provide for qualified withdrawals to achieve the program set forth in Schedule B hereof.

3. *Term of the Agreement:* This Agreement shall be effective on the date of execution by the Maritime Administrator and shall continue until terminated under Article 4.

4. *Termination of Agreement:* (A) This Agreement may be terminated at any time under any of the following circumstances:

(1) Upon written mutual agreement by the parties;

(2) Upon written notice by the Party that a change has been made in the rules and regulations which would have a substantial effect upon the rights or obligations of the Party.

(B) This Agreement shall terminate upon completion of the program as set forth in Schedule B hereof.

(C) Upon termination of this Agreement pursuant to paragraphs (A) and/or (B) hereof all amounts remaining in the Fund shall be treated as if withdrawn in a nonqualified withdrawal (as that term is defined in the Act and the rules and regulations) on the date of termination of this Agreement.

5. *Deposits to be made into the Fund:* (A) Subject to any restrictions contained in the Act, the rules and regulations, or this Agreement, the Party may deposit, for each taxable year to which this Agreement applies, amounts representing:

(1) Taxable income attributable to the operation of the vessels listed in Schedule A or B hereof;

(2) The depreciation allowable under section 167 of the Internal Revenue Code of 1954, on the vessels listed in Schedule A or B hereof;

(3) The net proceeds from the sale or other disposition of any of the vessels listed in Schedule A or B hereof; and

(4) The net proceeds from insurance or indemnity attributable to the vessels listed in Schedule A or B hereof.

(B) The Party shall deposit for each taxable year to which this Agreement applies:

(1) All receipts from the investment or reinvestment of amounts held in the Fund, except that the Party shall not be permitted to deposit more than is necessary to complete its program set out in Schedule B hereof; and

(2) The net proceeds from the mortgage of any vessel listed in Schedule B hereof for which qualified withdrawals from the Fund have been made.

(C) Notwithstanding anything in paragraph (A) or (B) hereof to the contrary, the Party shall make the minimum deposits set forth in Schedule D hereof at the time and in such amounts as may be set forth therein. The Party specifically agrees to deposit up to one hundred percent of allowable taxable income attributable to the operation of agreement vessels in order to meet its obligations under this paragraph.

(D) In the event that any leased vessel listed in Schedule A hereof is included in another capital construction fund agreement, the maximum amount of depreciation which the Party may deposit in respect to that vessel shall be calculated by using the allowable percentage of the depreciation ceiling listed for that vessel in Schedule A hereof.

6. *Withdrawals from the Fund:* (A) The Party may make such qualified withdrawals (as that term is defined in the Act and the rules and regulations) as shall be necessary to fulfill the obligations set forth in Schedule B hereof. Any such qualified withdrawal may be made without the consent of the Maritime Administrator, except as required by the rules and regulations.

(B) Any other withdrawal from the Fund shall be made only upon the prior written consent of the Maritime Administrator, as required by the rules and regulations.

7. *Investment of the Fund:* (A) The Party, at its discretion, may invest assets held in the Fund in accordance with the Act and the rules and regulations.

(B) The Party agrees that when investing assets held in the Fund to make such investments as will insure that sufficient cash is available at the time qualified withdrawals are required in accordance with the program described in Schedule B hereof.

8. *Pledges, Assignments and Transfers:* (A) The Party agrees not to assign, pledge or otherwise encumber, either directly or indirectly or through any reorganization, merger, or consolidation, all or any part of this Agreement, the Fund, or any assets in the Fund without the prior written consent of the Maritime Administrator: *Provided, however,* The Party may transfer the assets of the Fund, in whole or in part, to an investment trustee, as provided in the rules and regulations.

(B) The Party shall not obligate any assets in the Fund as a compensating balance.

(C) The Party may not sell, transfer or otherwise dispose of any vessel, or part thereof, described in Schedule B hereof without the prior written consent of the Maritime Administrator.

9. *Records and Reports:* (A) The Party and each affiliate, domestic agent, subsidiary or holding company connected with, or directly or indirectly controlling or controlled by

the Party shall keep its books, records, and accounts relating to the maintenance, operation, servicing of the vessel(s) and/or service(s) covered by this Agreement in such form as may be prescribed by the Maritime Administrator under the rules and regulations.

(B) The Maritime Administrator agrees not to require the duplication of books, records and accounts required to be kept in some other form by the Interstate Commerce Commission or the Secretary of the Treasury, so long as the information required in paragraph (A) hereof is made available to the Maritime Administrator.

(C) The Party agrees to file, upon notice from the Maritime Administrator, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, charters, ships' logs, memoranda of facts and transactions, as in the opinion of the Maritime Administrator may affect the Party's performance under this Agreement.

(D) The Maritime Administrator may require by regulation that any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Maritime Administrator.

(E) The Maritime Administrator may require the Party to establish and maintain systems of control of expenses and revenues in connection with the operation of the agreement vessel(s).

(F) The Party agrees to submit promptly to the Maritime Administrator any contract executed in connection with the program described in Schedule B hereof.

(G) The Maritime Administrator is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in this Article whenever he may deem it necessary or desirable.

10. *Modification and Amendment:* This Agreement may be modified or amended at any time by mutual written consent.

11. *Incorporation of Schedules:* The attached Schedules A, B, C, and D are incorporated into and made a part of this Agreement.

12. *Liquidated Damages:* (A) In the event that the Party operates any qualified agreement vessel described in Schedule B hereof in geographic trades other than those permitted by section 607 of the Act, this Agreement, and/or the rules and regulations, the Party shall pay to the United States an amount of liquidated damages for each day of such impermissible geographic trading which shall constitute the time value of the deferral of Federal income tax which the Party has received. The amount shall be calculated in accordance with the rules and regulations.

(B) The Party agrees to pay the daily rate of liquidated damages to the Maritime Administrator, for deposit in the Treasury of the United States, within the time limits provided for in the rules and regulations.

(C) Nothing in this Article shall in any way be construed to diminish or waive any of the Maritime Administrator's other remedies for breach under the Act, the Agreement, or the rules and regulations.

(D) Notwithstanding the fact that the Agreement may be terminated pursuant to the provisions of Article 4 hereof, or otherwise, the provisions of this Article 12 shall continue in effect as follows:

(1) In the case of a vessel constructed or acquired within one year of final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of twenty (20) years from the date of such vessel's final delivery;

(2) In the case of a vessel reconstructed or acquired more than one year after final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of ten (10) years from the date of such vessel's final delivery from the shipyard after reconstruction or the date of such vessel's acquisition; and

(3) In the case of a vessel included in Schedule B hereof as a qualified agreement vessel in regard to which qualified withdrawals from the Fund have been made to pay existing indebtedness, for a period of ten (10) years from the date of the first qualified withdrawal in regard to such vessel, *Provided, however,* That if such vessel was more than fifteen (15) years old on the date of the first qualified withdrawal in regard thereto, such conditions shall continue for a period of five (5) years in regard to such vessel.

13. *Warranties and Representations by the Party:* The Party hereby warrants and represents that:

(A) The Party is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, and will continue to be so for the term of this Agreement. The Party agrees that, each year, within thirty (30) days after the annual meeting of its stockholders, it shall file a supplemental affidavit as evidence of its continuing United States citizenship, provided that any changes in data last furnished with respect to officers, directors, and stockholders holding five percent or more of the issued and outstanding stock of each class or series which would result in a loss of the Party's status as a United States citizen shall be promptly reported to the Maritime Administrator.

(B) The Party owns, is the lessee, or has contracted for the construction of one or more eligible vessels (within the meaning of section 607(k) of the Act) as listed in Schedule A hereof.

(C) The qualified vessels described in Schedule B hereof: (1) Were or will be constructed or reconstructed in the United States, except as provided in the Act and the rules and regulations;

(2) Are or will be documented under the laws of the United States and will continue to remain so documented; and

(3) Will be operated in the foreign, Great Lakes or noncontiguous domestic trade of the United States within the meaning of the Act and the rules and regulations

(D) The Party will meet its deposit obligations as agreed upon in Article 5 of this Agreement.

(E) The Party will promptly inform the Maritime Administrator, in writing, of any change in circumstances which would tend to adversely affect the ability of the Party to carry out its obligations under the Agreement.

(F) The Party will faithfully conform to all rules and regulations governing the Agreement and the Fund.

(G) Nothing of monetary value has been improperly given, promised, or implied for entering into this Agreement. The Party further warrants that no improper personal, political or other activities have been used or attempted in an effort to influence the outcome of the discussions or negotiations leading to the award of this Agreement. Breach of this warranty shall constitute an event of default for which the Maritime Administrator shall have the right, notwithstanding Article 4, to terminate this Agreement without liability to the United States.

14. *Default in Obligations:* (A) If the Maritime Administrator determines that any substantial obligation under this Agreement is not being fulfilled by the Party, he may, under the rules and regulations and after the Party has been given notice and an opportunity to be heard, declare a breach and treat the entire Fund, or any portion thereof, as an amount withdrawn in a nonqualified withdrawal.

(B) The Maritime Administrator shall provide an opportunity for the Party to cure a breach declared pursuant to Paragraph (A) of this Article 14.

(C) Events of breach by the Party shall include, but shall not be limited to: (1) Failure in any respect to use due diligence in performing the program set forth in Schedule B hereof;

(2) Obligating the assets in the Fund as a compensating balance;

(3) Failure to make deposits required in Schedule D hereof;

(4) Failure to secure written permission from the Maritime Administrator when such permission is required by the rules and regulations;

(5) Failure to submit reports and/or records on a timely basis as provided in Article 9 hereof;

(6) Any material misrepresentation made by the Party or any failure by the Party to disclose material information in connection with this Agreement whether before or after execution hereof and whether made in an application, report, affidavit, or otherwise; or

(7) Failure by the Party to comply with any provisions of section 607 of the Act, the rules and regulations, or this Agreement.

15. *Extension of Federal Income Tax Benefits:* The Maritime Administrator agrees that the Federal income tax benefits provided in the Act and the rules and regulations shall be available to the Party if the Party shall carry out its obligations under this Agreement.

United States of America, Maritime Administrator, Department of Transportation

(Seal)
Attest:
By ______________
(Secretary)

(Seal)
By______________
(Secretary)
Attest:
By ______________________________
(Contracting Officer)
____
(Secretary)
Approved as to form: (Date of Execution)
______________ By ______________
(Assistant General Counsel, Maritime Administration) (President)

XYZ Co.—Schedule A—Eligible Agreement Vessels

(a)	(b)	(c)	(d)	(e)
Name of vessel	Specific type	Capacity	Owned or leased and owner is leased	Date and place constructed
SS *Smith*, official No. 236425.	Tanker	56,000 dwt	Leased: ABC Ships, Inc., San Diego, Calif., 50 percent of depreciation ceiling.	1962, American Steel, San Francisco, Calif.
SS *Brown*, official No. 325111	......do	265,000 dwt	Owned	1974, Southern Shipyards, Mobile, Ala.
SS *Jones*, official No. 190528	Container ship	30,000 dwt, 500 400-ft containers	......do	1954, Bond Shipyard, New York, N.Y.
Hercules, official No. 256,125	Oceangoing tugboat	105 ft 2,000 hp	......do	1968, Washington Iron Works, Seattle, Wash.
XYZ-1, official No. 257,164	Roll-on, roll-off barge	1,200 gr ton, 45 40-ft containers	......do	1968, Washington Iron Works, Seattle, Wash.
XYZ-2, official No. 260,138	......do	......do	......do	1969, Washington Iron Works, Seattle, Wash.
OTC-35, official No. 262,170	......do	1,500 gr ton, 60 40-ft containers	Leased; Oregon Towing Co., Portland, Oreg., 100 percent of depreciation ceiling.	1969, J. & J. Shipyard, Portland, Oreg.
200 trailers, Nos. 111032-A-10677B-1M through 11032-A-10877B-1M.	Dry cargo	40 ft	Leased; International Leasing Co., New York, N.Y. 0 percent of depreciation ceiling.	1968, Acme Container Corp., New York, N.Y.
1,500 containers, Nos. 312 A through 1312 A..	Refrigerated dry cargo	......do	Owned	1969, Aluminum Products, Inc., Dallas, Tex.

	(f)	(g)	(h)	(i)
	Date and place reconstructed	Date documented	Area of operation	Details of service
SS *Smith*, official No. 236425	Not available	1962	Noncontiguous domestic trade	Carriage of crude oil from Valdez, Alaska, to west coast of the continental United States.
SS *Brown*, official No. 325111	......do	1974	U.S. foreign trade	Worldwide carriage of crude oil.
SS *Jones*, official No. 190528	1970, Litton Systems, Mississippi	1954	U.S. foreign and noncontiguous trade.	Container service between Japan and California via Hawaii.
Hercules, official No. 256,125	Not available	1968	Domestic	Towing roll-on, roll-off barges from Puget Sound to San Francisco.
XYZ-1, official No. 257,164	......do	1968	......do	Carriage of trailer type containers between Puget Sound and San Francisco.
XYZ-2, official No. 260,138	......do	1969	......do	Do.
OTC-35, official No. 262,170	......do	1969	......do	Do.

200 trailers, Nos. 111032-A-10877B-1M through 11032-A-10877B-1M.	......do	NA	......do	For use on Barges *XYZ-1, XYZ-2,* and *OTC-35.*
1,500 containers, Nos. 312 A through 1312 A..	......do	NA	U.S. foreign noncontiguous domestic trade.	For use as complement of SS *Jones.*

XYZ Co., Program Objectives.—I. Acquisition or Construction of Vessels

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., Program Objectives.—II. Reconstruction of Vessels

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., Program Objectives.—III. Payment of Principal on Existing Indebtedness

Vessel name and official number	Purpose of indebtedness	Amount to be paid from fund

XYZ Co., Schedule C—Depositories for Capital Construction Fund

Name	*Address*
1. First American Bank checking account.	2001 Park Ave., San Francisco, Calif. 94109.
2. Southern California National Bank investment trustee established pursuant to sec. 390.7 of the SOC regulations..	1 Waterfront Place, San Francisco, Calif. 94101.

XYZ Co. Schedule D-Minimum Deposits

[In thousands]

Taxable year	Ordinary income	Net proceeds	Fund interest	Depreciation	Total
1973 to 1975	$3,150	[1]$2,400	$250		$5,800
1976 to 1978	2,900	[2]1,500	325		4,725
1979 to 1981	3,000		350	85	3,435
1982 to 1984	2,800		74	125	3,000
1985 to 1987	2,850		90	60	3,000
1988 to 1990	2,900		100		3,000
1991 to 1993	3,000		100		3,100
1994 to 1996	3,100		110		3,210
1997 to 1999	3,250		120		3,370
2000	3,200		120		3,320
Total					35,960

[1] Net proceeds from sale of barges *XYZ-1* and *XYZ-2* for $1,200,000 each.

[2] Net proceeds from sale of tug *Hercules*.

[41 FR 4265, Jan. 29, 1976, as amended at 42 FR 43632, Aug. 30, 1977]

APPENDIX III TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—SAMPLE SEMIANNUAL REPORT

[Illustrative sample of the report required by the Maritime Administration pursuant to 46 CFR Part 390 prescribing the capital construction fund reporting requirements to be followed by those companies which are party to a capital construction fund agreement]

EXHIBIT A—XYZ CO., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—

	Thousands
Cash (exhibit A-1 and B)	$1,025
Securities and stock—adjusted basis (exhibit A-2 and B)	2,560
Fund total for tax purposes on deposit (exhibit C)	3,585
Net accrued deposits and withdrawals (exhibit A-3)	450
Fund total (agrees with balance sheet submitted at this date) on deposit for book purposes—June 30, 19—	4,035

EXHIBIT A—XYZ CO., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19——Continued

	Thousands
Portion of fund total for tax purposes as of June 30, 19—, which represents a "CCF: Security amount" pursuant to an agreement covering the dual use of a capital construction fund	*Thousands*
Balance brought forward	$403
Deposits	82
Total "CCF: Security Amount"	485

EXHIBIT A-1—XYZ COMPANY

Summary of cash on deposit in capital CONSTRUCTION FUND AS OF JUNE 30, 19—

	Thousands
First American Bank, San Francisco, Calif., checking account No. 654-0876-211	$1,025
Total cash in capital construction fund at June 30, 19—	1,025

EXHIBIT A-2.—XYZ CO., SUMMARY OF SECURITIES AND STOCK (ADJUSTED BASIS AND FAIR MARKET VALUE) IN CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—(IN THOUSANDS)

	Adjusted basis	Fair market value
Treasury notes—due July 4, 19—, $800,000 face value, 1st American Bank, San Francisco, Calif., trust account No. 610-2135	$760	$760
Negotiable certificate of deposit—due July 31, 19—, $500,000 at 8 percent, 1st American Bank, San Francisco, Calif., CD No. 186007	500	500
U.S.A. Motors, Inc.—class A common stock, 5,000 shares, Southern California National Bank, trust account No. 358-21	625	725
Energy Co., Inc.—1st preferred, 4,100 shares, Southern California National Bank, trust account No. 358-21	205	255
Boon Corp.—class A common stock, 10,000 shares, Southern California National Bank, San Francisco, Calif., trust account No. 358-21	470	520
Total securities and stock in capital construction fund at June 30, 19—	2,560	2,760

EXHIBIT A-3.—XYZ CO., SUMMARY OF NET ACCRUED DEPOSITS AND WITHDRAWALS IN CAPITAL CONSTRUCTION FUND AS OF JUNE 19—

	Thousands
Accrued deposits:	
19— income (6 mos. ended June 30, 19—)	$500
Depreciation	200
Total	700
Accrued withdrawals: Progress payment made from general fund—hull 210	250
Net accrued deposits and withdrawals in capital construction fund at June 30, 19—	450

EXHIBIT B.—XYZ CO., TRANSCRIPT OF TRANSACTIONS IN THE CAPITAL CONSTRUCTION FUND FOR THE 6 MOS. ENDED JUNE 30, 19—

Date	Description of transaction	Cash		Securities and stock (at adjusted basis)		Detail
		Debit	Credit	Debit	Credit	
Jan. 1, 19—	Balances brought forward	$1,500,000		$2,000,000		
Jan. 1, 19—	Bond debt payment—SS *Smith.*		$250,000			
Jan. 3, 19—	Deposit 19— depreciation	300,000				
Jan. 4, 19—	Purchased Treasury notes—90 days at 6-percent discount..		752,000	752,000		$800,000 at 6-percent discount.
Feb. 29, 19—	Dividends earned	4,500				$0.45 per share on 10,000 shares Boon Corp.
Mar. 15, 19—	Progress payment No. 3 hull 210		172,500			
Apr. 4, 19—	Sale of Treasury notes—cost	752,000			752,000	
	Income from sale	48,000				
Apr. 4, 19—	Purchased Treasury notes 90 days at 5-percent discount.		760,000	760,000		$800,000 at 5-percent discount.
Apr. 15, 19—	Deposit from 19— earnings	310,000				
May 15, 19—	Progress payment No. 4—hull 210.		180,000			
June 15, 19—	Sale of stock—cost	200,000			200,000	4,000 shares at $56.25 per share. Energy Co., Inc.
	Gain on sale of stock	25,000				
	Balances carried forward	1,025,000		2,560,000		

EXHIBIT C.—XYZ CO., SUMMARY OF TOTAL TRANSACTION AFFECTING THE TAX ACCOUNT BALANCES IN THE CAPITAL CONSTRUCTION FUND FOR THE 6 MOS. ENDED JUNE 30, 19—]

	Ordinary income	Capital gain	Capital	Total
Opening balance, Jan. 1, 19—	$1,000,000	$1,000,000	$1,500,000	$3,500,000
Deposits, income, transfers in, etc	362,500	25,000	300,000	687,500
Total	1,362,500	1,025,000	1,800,000	4,187,500
Withdrawals, losses, transfers out, etc			602,500	
Balance at June 30, 19—	1,362,500	1,025,000	1,197,500	3,585,000

EXHIBIT D—XYZ COMPANY

SUMMARY BY VESSEL OF QUALIFIED WITHDRAWALS FROM THE FUND FOR THE SIX MONTHS ENDING JUNE 30, 19—

A. Acquisition or Construction of Vessels

(1) 80,000 dwt tanker: No qualified withdrawals have been made to date; construction is presently scheduled to commence in mid-1977.

(2) 130-foot ocean tug hull No. 210:

Balance brought forward	$700,000
Qualified withdrawals during period	352,500
Total qualified withdrawals to date	1,052,500

130-foot ocean tug hull No. 211: No withdrawals have been made to date; construction is presently scheduled to commence in November 1975

B. Acquisition or Construction of Barges, Containers and Trailers

250-foot tank barge: No qualified withdrawals have been made to date; construction presently scheduled to commence in November 1975.

C. Reconstruction of Vessels

None.

D. Reconstruction of Barges, Containers, and Trailers

None.

E. Payment of Principal on Existing Indebtedness

SS *Smith*—Official No. 236425:

Balance brought forward	$500,000
Qualified withdrawals during period	250,000
Total qualified withdrawals to date	750,000

APPENDIX IV TO PART 390—SAMPLE ADDENDUM TO MARITIME ADMINISTRATION CAPITAL CONSTRUCTION FUND AGREEMENT

This Agreement, made by the Maritime Administrator, Department of Transportation ("Maritime Administrator") and ———— ("Party"), a citizen of the United States of America, as an Addendum to that certain agreement, Contract No. MA/CCF-

Whereas: 1. On ————, the parties hereto entered into a Capital Construction Fund Agreement ("Agreement") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The parties hereto desire to modify that Agreement in the manner hereinafter set forth;

3. The parties hereto have agreed to said amendment and desire to incorporate the same into the Agreement.

Now, therefore, in consideration of the premises the Maritime Administrator and the Party agree as follows:

Notwithstanding the provisions of Article 4(A)(2) of the Agreement, the Party may, within sixty (60) days after notice appears in the FEDERAL REGISTER that the Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Transportation have been finalized, terminate the Agreement, if such Regulations have a substantial effect on the rights or obligations of the Party. Upon termination of the Agreement pursuant to this Addendum No. — the provisions of the Internal Revenue Code of 1954, the Act, and the rules and regulations shall apply to all funds remaining in the Fund as if such funds were withdrawn in a non-qualified, withdrawal, as that term is defined in the Act and the rules and regulations.

In witness whereof, the Secretary and the Party have executed this addendum, in quadruplicate, effective as of the date indicated below.

UNITED STATES OF AMERICA,
Secretary of Transportation,
Maritime Administrator,

Department of Transportation

By.. (Contracting Officer)	By................
Date..	Title................
Attest:	Attest:
By.. (Secretary)	By................
....	Title................
(SEAL)	(SEAL)

Approved as to form:

....
(Assistant General Counsel
Maritime Administration)

[G.O. 109, Rev., Amdt. 6, 42 FR 43634, Aug. 30, 1977]

APPENDIX V TO PART 390—SAMPLE QUALIFIED TRADE AFFIDAVIT

AFFIDAVIT

State of ——————————————

County of ——————————————

I, ————, (Name) being duly sworn, depose and say:

1. That I am the ———— (Title) of ————. (Name of party)

2. That I am fully acquainted with and have knowledge of the operations of all qualified agreement vessels owned or operated by my company and identified in Capital Construction Fund Agreement, MA/CCF——.

3. That I have full knowledge of the trading restrictions and liquidated damages provisions pertaining to qualified agreement vessels, as stipulated in section 607 of the Merchant Marine Act, 1936, as amended, and in the rules and regulations of 46 CFR Part 390.

4. That based on my inspection of Company records and to the best of my knowledge and belief, except as noted below in statement 5 of this affidavit, during the period ———————— (Beginning of taxable year) through ———————— (End of taxable year) my company operated its qualified agreement vessels only in the United States, foreign, Great Lakes, and noncontiguous domestic trade in accordance with Capital Construction Fund Agreement, MA/CCF————.

5. Exceptions to statement 4 of this Affidavit are as follows (indicate exceptions below or attach a supplemental statement if additional space is needed; if there are no exceptions, write "none"):

————————————
(Affiant)

Subscribed and sworn to before me, a Notary Public in and for the State, City and County above named, this — day of ——, 19——.

————————————
(Notary Public)

My commission expires ————, 19——

[41 FR 39751, Sept. 16, 1976]

PART 391—FEDERAL INCOME TAX ASPECTS OF THE CAPITAL CONSTRUCTION FUND

Sec.

391.0 Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.
391.1 Scope of section 607 of the Act and the regulations in this part.
391.2 Ceiling on deposits.
391.3 Nontaxability of deposits.
391.4 Establishment of accounts.
391.5 Qualified withdrawals.
391.6 Tax treatment of qualified withdrawals.
391.7 Tax treatment of nonqualified withdrawals.
391.8 Certain corporate reorganizations and changes in partnerships, and certain transfers on death. [Reserved]
391.9 Consolidated returns. [Reserved]
391.10 Transitional rules for existing funds.
391.11 Definitions.

AUTHORITY: Secs. 204(b) and 607(l), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1177), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036), Dept. of Commerce Organization Order 10-8 (38 FR 19707), July 23, 1973.

SOURCE: 41 FR 23960, June 14, 1976, unless otherwise noted.

§ 391.0 Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.

SEC. 607 (a) Agreement Rules.

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary of Transportation under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Transportation may by regulations prescribe or are set forth in such agreement; except that the Secretary of Transportation may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1) (A)) which is attributable to the operation of the agreement vessels.

(b) Ceiling on Deposits.

(1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of:

(A) That portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States.

(B) The amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels.

(C) If the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) The receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) Requirements as to Investments.

Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary of Transportation. They may be invested only in interest-bearing securities approved by the Secretary of Transportation; except that, if the Secretary of Transportation consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection, and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability for Deposits.

(1) For purposes of the Internal Revenue Code of 1954—

(A) Taxable income (determined without regard to this section) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A).

(B) Gain from a transaction referred to in subsection (b)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund.

(C) The earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) The earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section, and

(E) In applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) Establishment of Accounts.

For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

(A) The capital account,

(B) The capital gain account, and

(C) The ordinary income account.

(2) The capital account shall consist of—

(A) Amounts referred to in subsection (b)(1)(B),

(B) Amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),

(C) 85 percent of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) Interest income exempt from taxation under section 103 of such Code.

(3) The capital gain account shall consist of—

(A) Amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(B) Amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) Amounts referred to in subsection (b)(1)(A),

(B) (i) Amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(ii) Amounts representing capital losses on assets held in the fund for 6 months or less,

(C) Interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) Ordinary income from a transaction described in subsection (b)(1)(C), and

(E) 15 percent of any dividend referred to in paragraph (2)(C).

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) Purposes of Qualified Withdrawals.

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) The acquisition, construction, or reconstruction of a qualified vessel,

(B) The acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) The payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary of Transportation, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary of Transportation determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) Tax Treatment of Qualified Withdrawals.

(1) Any qualified withdrawal from a fund shall be treated—

(A) First as made out of the capital account,

(B) Second as made out of the capital gain account, and

(C) Third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to—

(A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954), or

(B) One-half of such portion, in the case of any other person.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) Tax Treatment of Nonqualified Withdrawals.

(1) Except as provided in subsection (i), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

(A) First as be made out of the ordinary income account,

(B) Second as made out of the capital gain account, and

(C) Third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(A) Any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made.

(B) Any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) For the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) No interest shall be payable under section 6601 of such Code and no addition to the tax shall be payable under section 6651 of such Code.

(ii) Interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) No interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) Made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) Made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary of Transportation and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(i) Certain Corporate Reorganizations and Changes in Partnerships.

Under joint regulations—

(1) A transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1954 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) A similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K of such Code).

(j) Treatment of Existing Funds.

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as "old fund") under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) May not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) May not simultaneously maintain such old fund and a new fund established under this section, and

(C) If he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For

purposes of subsection (h)(3)(C), the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) Definitions.

For purposes of this section—

(1) The term "eligible vessel" means any vessel—

(A) Constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) Documented under the laws of the United States, and

(C) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

(2) The term "qualified vessel" means any vessel—

(A) Constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) Documented under the laws of the United States, and

(C) Which the person maintaining the fund agrees with the Secretary of Transportation will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term "agreement vessel" means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term "United States," when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term "United States foreign trade" includes (but is not limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 506 of the Act.

(6) The term "joint regulations" means regulations prescribed under subsection (l).

(7) The term "vessel" includes cargo handling equipment which the Secretary of Transportation determines is intended for use primarily on the vessel. The term "vessel" also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term "noncontiguous trade" means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(l) Records; Reports; Changes in Regulations.

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary of Transportation or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary of Transportation shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary of Transportation under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

§ 391.1 Scope of section 607 of the Act and the regulations in this part.

(a) *In general.* The regulations prescribed in this part provide rules for determining the income tax liability of any person a party to an agreement with the Secretary of Transportation establishing a capital construction fund (for purposes of this part referred to as the "fund") authorized by section 607 of the Merchant Marine Act, 1936, as amended (for purposes of this part referred to as the "Act"). With respect to such parties, section 607 of the Act in general provides for the nontaxability of certain deposits of money or other property into the fund out of earnings or gains realized from the operation of vessels covered in an agreement, gains realized from the sale or other disposition of agreement vessels or proceeds from insurance for indemnification for loss of agreement vessels, earnings from the investment or reinvestment of amounts held in a fund, and gains with respect to amounts or deposits in the fund. Transitional rules are also provided for the treatment of "old funds" existing on or before the effective date of the Merchant Marine Act of 1970 (see § 391.10).

(b) *Cross references.* For rules relating to eligibility for a fund, deposits, and withdrawals and other aspects, see the regulations prescribed by the Secretary of Transportationin title 46 (Merchant Marine) and by the Secretary of Commerce in Title 50 (Fisheries) of the Code of Federal Regulations.

(c) *Code.* For purposes of this part, the term "Code" means the Internal Revenue Code of 1954, as amended.

§ 391.2 Ceiling on deposits.

(a) *In general*—(1) *Total ceiling.* Section 607(b) of the Act provides a ceiling on the amount which may be deposited by a party for a taxable year pursuant to an agreement. The amount which a party may deposit into a fund may not exceed the sum of the following subceilings:

(i) The lower of (*a*) the taxable income (if any) of the party for such year (computed as provided in chapter 1 of the Code but without regard to the carryback of any net operating loss or net capital loss and without regard to section 607 of the Act) or (*b*) taxable income (if any) of such party for such year attributable under paragraph (b) of this section to the operation of agreement vessels (as defined in paragraph (f) of this section) in the foreign or domestic commerce of the United States or in the fisheries of the United States (see section 607(b)(1)(A) of the Act),

(ii) Amounts allowable as a deduction under section 167 of the Code for such year with respect to the agreement vessels (see section 607(b)(1)(B) of the Act),

(iii) The net proceeds (if not included in paragraph (a)(i) of this section) from (*a*) the sale or other disposition of any agreement vessels or (*b*) insurance or indemnity attributable to any agreement vessels (see section 607(b)(1)(C) of the Act and paragraph (c) of this section), and

(iv) Earnings and gains from the investment or reinvestment of amounts held in such fund (see section 607 (b)(1)(D) of the Act and paragraphs (d) and (g) of this section).

(2) *Overdeposits.* (i) If for any taxable year an amount is deposited into the fund under a subceiling computed under paragraph (a) (1) of this section which is in excess of the amount of such subceiling for such year, then at the party's option such excess (or any portion thereof) may—

(*a*) Be treated as a deposit into the fund for that taxable year under another available subceiling, or

(*b*) Be treated as not having been deposited for the taxable year and thus, at the party's option, may be disposed of either by it being—

(*1*) Treated as a deposit into the fund under any subceiling available in the first subsequent taxable year in which a subceiling is available, in which case such amount shall be deemed to have been deposited on the first day of such subsequent taxable year, or

(*2*) Repaid to the party from the fund.

(ii) (*a*) When a correction is made for an overdeposit, proper adjustment shall be made with respect to all items for all taxable years affected by the overdeposit, such as, for example, amounts in each account described in § 391.4, treatment of nonqualified withdrawals, the consequences of qualified withdrawals and the treatment of losses realized or treated as realized by the fund. Thus, for example, if the party chooses to have the fund repay to him the amount of an overdeposit, amounts in each account, basis of assets, and any affected item will be determined as though no deposit and repayment had been made. Accordingly, in such a case, if there are insufficient amounts in an account to cover a repayment of an overdeposit (as determined before correcting the overdeposit), and the party had applied the proceeds of a qualified withdrawal from such account towards the purchase of a qualified vessel (within the meaning of § 391.11(a)(2)), then such account and the basis of the vessel shall be adjusted as of the time such withdrawal was made and proceeds were applied, and repayment shall be made from such account as adjusted. If a party chooses to treat the amount of an overdeposit as a deposit under a subceiling for a subsequent year, similar adjustments to affected items shall be made. If the amount of a withdrawal would have exceeded the amount in the fund (determined after adjusting all affected amounts by reason of correcting the overdeposit), the withdrawal to the extent of such excess shall be treated as a repayment made at the time the withdrawal was made.

(*b*) If the accounts (as defined in § 391.4) that were increased by reason of excessive deposits contain sufficient amounts at the time the overdeposit is discovered to repay the party, the party may, at his option, demand repayment of such excessive deposits from such accounts in lieu of making the adjustments required by paragraph (a)(2)(ii)(*a*) of this section.

(iii) During the period beginning with the day after the date an overdeposit was actually made and ending with the date it was disposed of in accordance with paragraph (a)(2)(i)(*b*) of this section, there shall be included in the party's gross income for each taxable year the earnings attributed to any amount of overdeposit on hand during such a year. The earnings attributable to any amount of overdeposit on hand during a taxable year shall be an amount equal to the product of—

(*a*) The average daily earnings for each one dollar in the fund (as determined in paragraph (a)(2)(iv) of this section),

(*b*) The amount of overdeposit (as determined in paragraph (a)(2)(vi) of this section), and

(*c*) The number of days during the taxable year the overdeposit existed.

(iv) For purposes of paragraph (a)(2)(iii)(*a*) of this section, the average daily earnings for each dollar in the fund shall be determined by dividing the total earnings of the fund for the taxable year by the sum of the products of—

(*a*) Any amount on hand during the taxable year (determined under paragraph (a)(2)(v) of this section), and

(*b*) The number of days during the taxable year such amount was on hand in the fund.

(v) For purposes of this paragraph—

(*a*) An amount on hand in the fund or an overdeposit shall not be treated as on hand on the day deposited but shall be treated as on hand on the day withdrawn, and

(*b*) The fair market value of such amounts on hand for purposes of this subparagraph shall be determined as provided in § 20.2031-2 of the Estate Tax Regulations of this chapter but without applying the blockage and other special rules contained in paragraph (e) thereof.

(vi) For purposes of paragraph (a)(2)(iii)(*b*) of this section, the amount of overdeposit on hand at any time is an amount equal to—

(*a*) The amount deposited into the fund under a subceiling computed under paragraph (a) (1) of this section which is in excess of the amount of such subceiling, less

(*b*) The sum of—

(*1*) Amounts described in paragraph (a)(2)(vi)(*a*) of this section treated as a deposit under another subceiling for the taxable year pursuant to paragraph (a)(2)(i) of this section,

(*2*) Amounts described in paragraph (a)(2)(vi)(*a*) of this section disposed of (or treated as disposed of) in accordance with paragraphs (a)(2)(i) or (ii) of this section prior to such time.

(vii) To the extent earnings attributed under paragraph (a)(2)(iii) of this section represent a deposit for any taxable year in excess of the subceiling described in paragraph (a)(1)(iv) of this section for receipts from the investment or reinvestment of amounts held in the fund, such attributed earnings shall be subject to the rules of this paragraph for overdeposits.

(3) *Underdeposit caused by audit adjustment.* [Reserved]

(4) *Requirements for deficiency deposits.* [Reserved]

(b) *Taxable income attributable to the operation of an agreement vessel*—(1) *In general.* For purposes of this section, taxable income attributable to the operation of an agreement vessel means the amount, if any, by which the gross income of a party for the taxable year from the operation of an agreement vessel (as defined in paragraph (f) of this section) exceeds the allowable deductions allocable to such operation (as determined under paragraph (b)(3) of this section). The term "taxable income attributable to the operation of the agreement vessels" means the sum of the amounts described in the preceding sentence separately computed with respect to each agreement vessel (or share therein) or, at the party's option, computed in the aggregate.

(2) *Gross income.* (i) Gross income from the operation of agreement vessels means the sum of the revenues which are derived during the taxable year from the following:

(*a*) Revenues derived from the transportation of passengers, freight, or mail in such vessels, including amounts from contracts for the charter of such vessels to others, from operating differential subsidies, from collections in accordance with pooling agreements and from insurance or indemnity net proceeds relating to the loss of income attributable to such agreement vessels.

(*b*) Revenues derived from the operation of agreement vessels relating to commercial fishing activities, including the transportation of fish, support activities for fishing vessels, charters for commercial fishing, and insurance or indemnity net proceeds relating to the loss of income attributable to such agreement vessels.

(*c*) Revenues from the rental lease, or use by others of terminal facilities, revenues from cargo handling operations and tug and lighter operations, and revenues from other services or operations which are incidental and directly related to the operation of an agreement vessel. Thus, for example, agency fees, commissions, and brokerage fees derived by the party at his place of business for effecting transactions for services incidental and directly related to shipping for the accounts of other persons are includible in gross income from the operation of agreement vessels where the transaction is of a kind customarily consummated by the party for his own account at such place of business.

(*d*) Dividends, interest, and gains derived from assets set aside and reasonably retained to meet regularly occurring obligations relating to the shipping or fishing business directly connected with the agreement vessel which obligations cannot at all times be met from the current revenues of the business because of layups or repairs, special surveys, fluctuations in the business, and reasonably forseeable strikes (whether or not a strike actually occurs), and security amounts retained by reason of participation in conferences, pooling agreements, or similar agreements.

(ii) The items of gross income described in paragraphs (b)(2)(i)(*c*) and (*d*) of this section shall be considered to be derived from the operations of a particular agreement vessel in the same proportion that the sum of the items of gross income described in paragraphs (b)(2)(i) (*a*) and (*b*) of this section which are derived from the operations of such agreement vessel bears to the party's total gross income for the taxable year from operations described in paragraphs (b)(2)(i) (*a*) and (*b*) of this section.

(iii) In the case of a party who uses his own or leased agreement vessels to transport his own products, the gross income attributable to such vessel operations is an amount determined to be an arm's length charge for such transportation. The arm's length charge shall be determined by applying the principles of section 482 of the Code and the regulations thereunder as if the party transporting the product and the owner of the product were not the same person but were controlled taxpayers within the meaning of § 1.482-1(a)(4) of the Income Tax Regulations of this chapter. Gross income attributable to the operation of agreement vessels does not include amounts for which the party is allowed a deduction for percentage depletion under sections 611 and 613 of the Code.

(3) *Deductions.* From the gross income attributable to the operation of an agreement vessel or vessels as determined under paragraph (b)(2) of this section, there shall be deducted in accordance with the principles of § 1.861-8 of the Income Tax Regulations of this chapter, the expenses, losses, and other deductions definitely related and therefore allocated and apportioned thereto and a ratable part of any expenses, losses, or other deductions which are not definitely related to any gross income of the party. Thus, for example, if a party has gross income attributable to the operation of an agreement vessel and other gross income and has a particular deduction

definitely related to both types of gross income, such deductions must be apportioned between the two types of gross income on a reasonable basis in determining the taxable income attributable to the operation of the agreement vessel.

(4) *Net operating and capital loss deductions.* The taxable income of a party attributable to the operation of agreement vessels shall be computed without regard to the carryback of any net operating loss deduction allowed by section 172 of the Code, the carryback of any net capital loss deduction allowed by section 165(f) of the Code, or any reduction in taxable income allowed by section 607 of the Act.

(5) *Method of accounting.* Taxable income must be computed under the method of accounting which the party uses for Federal income tax purposes. Such method may include a method of reporting whereby items of revenue and expense properly allocable to voyages in progress at the end of any accounting period are eliminated from the computation of taxable income for such accounting period and taken into account in the accounting period in which the voyage is completed.

(c) *Net proceeds from transactions with respect to agreement vessels.* [Reserved]

(d) *Earnings and gains from the investment or reinvestment of amounts held in a fund*—(1) *In general.* (i) Earnings and gains received or accrued by a party from the investment or reinvestment of assets in a fund is the total amount of any interest or dividends received or accrued, and gains realized, by the party with respect to assets deposited in, or purchased with amounts deposited in, such fund. Such earnings and gains are therefore required to be included in the gross income of the party unless such amount, or a portion thereof, is not taken into account under section 607(d)(1)(C) of the Act and § 391.3(b)(2)(ii) by reason of a deposit or deemed deposit into the fund. For rules relating to receipts from the sale or other disposition of nonmoney deposits into the fund, see paragraph (g) of this section.

(ii) Earnings received or accrued by a party from investment or reinvestment of assets in a fund include the ratable monthly portion of original issue discount included in gross income pursuant to section 1232(a)(3) of the Code. Such ratable monthly portion shall be deemed to be deposited into the ordinary income account of the fund, but an actual deposit representing such ratable monthly portion shall not be made. For basis of a bond or other evidence of indebtedness issued at a discount, see § 391.3(b)(2)(ii)(b).

(2) *Gain realized.* (i) The gain realized with respect to assets in the fund is the excess of the amount realized (as defined in section 1001(b) of the Code and the regulations thereunder) by the fund on the sale or other disposition of a fund asset over its adjusted basis (as defined in section 1011 of the Code) to the fund. For the adjusted basis of nonmoney deposits, see paragraph (g) of this section.

(ii) Property purchased by the fund (including property considered under paragraph (g)(1)(iii) of this section as purchased by the fund) which is withdrawn from the fund in a qualified withdrawal (as defined in § 391.5) is treated as a disposition to which subdivision (i) of this subparagraph applies. For purposes of determining the amount by which the balance within a particular account will be reduced in the manner provided in § 391.6(b) (relating to order of application of qualified withdrawals against accounts) and for purposes of determining the reduction in basis of a vessel, barge, or container (or share therein) pursuant to § 391.6(c), the value of the property is its fair market value on the day of the qualified withdrawal.

(3) *Holding Period.* Except as provided in paragraph (g) of this section, the holding period of fund assets shall be determined under section 1223 of the Code.

(e) *Leased vessels.* In the case of a party who is a lessee of an agreement vessel, the maximum amount which such lessee may deposit with respect to any agreement vessel by reason of section 607(b)(1)(B) of the Act and paragraph (a)(1)(ii) of this section (relating to depreciation allowable) for any period shall be reduced by the amount (if any) which, under an agreement entered into under section 607 of the Act, the owner is required or permitted to deposit for such period with respect to such vessel by reason of section 607(b)(1)(B) of the Act and paragraph (a)(1)(ii) of this section. The amount of depreciation depositable by the lessee under this paragraph is the amount of depreciation deductible by the lessor on its income tax return, reduced by the amount described in the preceding sentence or the amount set forth in the agreement, whichever is lower.

(f) *Definition of agreement vessel.* For purposes of this section, the term "agreement vessel" (as defined in §391.11 (a)(3) and 46 CFR 390.6) includes barges and containers which are the complement of an agreement vessel and which are provided for in the agreements, agreement vessels which have been contracted for or are in the process of construction, and any shares in an agreement vessel. Solely for purposes of this section, a party is considered to have a "share" in an agreement vessel if he has a right to use the vessel to generate income from its use whether or not the party would be considered as having a proprietary interest in the vessel for purposes of State or Federal law. Thus, a partner may enter into an agreement with respect to his share of the vessel owned by the partnership and he may make deposits of his distributive share of the sum of the four subceilings described in paragraph (a)(1) of this section. Notwithstanding the provisions of Subchapter K of the Code (relating to the taxation of partners and partnerships), the Internal Revenue Service will recognize, solely for the purposes of applying this part, an agreement by an owner of a share in an agreement vessel even though the "share" arrangement is a partnership for purposes of the Code.

(g) *Special rules for nonmoney deposits and withdrawals*—(1) *In general.* (i) Deposits may be made in the form of money or property of the type permitted to be deposited under the agreement. (For rules relating to the types of property which may be deposited into the fund, see 46 CFR 390.7(d), and 50 CFR Part 259.) For purposes of this paragraph, the term "property" does not include money.

(ii) Whether or not the election provided for in paragraph (g)(2) of this section is made—

(*a*) The amount of any property deposit, and the fund's basis for property deposited in the fund, is the fair market value of the property at the time deposited, and

(*b*) The fund's holding period for the property begins on the day after the deposit is made.

(iii) Unless such an election is made, deposits of property into a fund are considered to be a sale at fair market value of the property, a deposit of cash equal to such fair market value, and a purchase by the fund of such property for cash. Thus, in the absence of the election, the difference between the fair market value of such property deposited and its adjusted basis shall be taken into account as gain or loss for purposes of computing the party's income tax liability for the year of deposit.

(iv) For fund's basis and holding period of assets purchased by the fund, see paragraphs (d)(2) and (3) of this section.

(2) *Election not to treat deposits of property other than money as a sale or exchange at the time of deposit.* A party may elect to treat a deposit of property as if no sale or other taxable event had occurred on the date of deposit. If such election is made, in the taxable year the fund disposes of the property, the party shall recognize as gain or loss the amount he would have recognized on the day the property was deposited into the fund had the election not been made. The party's holding period with respect to such property shall not include the period of time such property was held by the fund. The election shall be made by a statement to that effect, attached to the party's Federal income tax return for the taxable year to which the deposit relates, or, if such return is filed before such deposit is made, attached to the party's return for the taxable year during which the deposit is actually made.

(3) *Effect of qualified withdrawal of property deposited pursuant to elec-*

tion. If property deposited into a fund, with respect to which an election under paragraph (g)(2) of this section is made, is withdrawn from the fund in a qualified withdrawal (as defined in § 391.5) such withdrawal is treated as a disposition of such property resulting in recognition by the party of gain or loss (if any) as provided in paragraph (g)(2) of this section with respect to nonfund property. In addition, such withdrawal is treated as a disposition of such property by the fund resulting in recognition of gain or loss by the party with respect to fund property to the extent the fair market value of the property on the date of withdrawal is greater or less (as the case may be) than the adjusted basis of the property to the fund on such date. For purposes of determining the amount by which the balance within a particular account will be reduced in the manner provided in § 391.6(b) (relating to order of application of qualified withdrawals against accounts and for purposes of determining the reduction in basis of a vessel, barge, or container (or share therein) pursuant to § 391.6(c), the value of the property is its fair market value on the day of the qualified withdrawal. For rules relating to the effect of a qualified withdrawal of property purchased by the fund (including deposited property considered under paragraph (g)(1)(iii) of this section as purchased by the fund), see paragraph (d)(2)(ii) of this section.

(4) *Effect of nonqualified withdrawal of property deposited pursuant to election.* If property deposited into a fund with respect to which an election under paragraph (g)(2) of this section is made, is withdrawn from the fund in a nonqualified withdrawal (as defined in § 391.7(b)), no gain or loss is to be recognized by the party with respect to fund property or nonfund property but an amount equal to the adjusted basis of the property to the fund is to be treated as a nonqualified withdrawal. Thus, such amount is to be applied against the various accounts in the manner provided in § 391.7(c), such amount is to be taken into account in computing the party's taxable income as provided in § 391.7(d), and such amount is to be subject to interest to the extent provided for in § 391.7(e). In the case of withdrawals to which this subparagraph applies, the adjusted basis of the property in the hands of the party is the adjusted basis on the date of deposit, increased or decreased by the adjustments made to such property while held in the fund, and in determining the period for which the party has held the property there shall be included, in addition to the period the fund held the property, the period for which the party held the property before the date of deposit of the property into the fund. For rules relating to the basis and holding period of property purchased by the fund (including deposited property considered under paragraph (g)(1)(ii) of this section as purchased by the fund) and withdrawn in a nonqualified withdrawal see § 391.7(f).

(5) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). X Corporation, which uses the calendar year as its taxable year, maintains a fund described in § 391.1 X's taxable income (determined without regard to section 607 of the Act) is $100,000, of which $80,000 is taxable income attributable to the operation of agreement vessels (as determined under paragraph (b)(1) of this section). Under the agreement, X is required to deposit into the fund all earnings and gains received from the investment or reinvestment of amounts held in the fund, an amount equal to the net proceeds from transactions referred to in § 391.2(c), and an amount equal to 50 percent of its earnings attributable to the operation of agreement vessels provided that such 50 percent does not exceed X's taxable income from all sources for the year of deposit. The agreement permits X to make voluntary deposits of amounts equal to 100 percent of its earnings attributable to the operation of agreement vessels, subject to the limitation with respect to taxable income from all sources. The agreement also provides that deposits attributable to such earnings may be in the form of cash or other property. On March 15, 1973, X deposits, with respect to its 1972 earnings attributable to the operation of agreement vessels, stock with a fair market value at the time of deposit of $80,000 and an adjusted basis to X of $10,000. Such deposit represents agreement vessel income of $80,000. At the time of deposit, such stock had been held by X for a period exceeding 6 months. X does not elect under subparagraph (2) of this paragraph to defer recognition of the gain. Accordingly, under subparagraph (1)(iii) of this paragraph, the deposit is treated as a deposit of $80,000 and X realizes a long-term capital gain of $70,000 on March 15, 1973.

Example. (*2*). The facts are the same as in example (1), except that X elects in accordance with subparagraph (2) of this paragraph not to treat the deposit as a sale or exchange. On July 1, 1974, the fund sells the stock for $85,000. The basis to the fund of the stock is $80,000 (see subparagraph (1)(ii)(*a*) of this paragraph). With respect to non fund property, X recognizes $70,000 of long-term capital gain on the sale includible in its gross income for 1974. With respect to fund property, X realizes $5,000 of long-term capital gain (the difference between the amount received by the fund on the sale of the stock, $85,000, and the basis to the fund of the stock, $80,000), an amount equal to which is required to be deposited into the fund with respect to 1974, as a gain from the investment or reinvestment of amounts held in the fund. Since the fund held the stock for a period exceeding 6 months, the $5,000 is allocated to the fund's capital gain account under § 391.4(c).

Example (*3*). The facts are the same as in example (2), except that the fund sells the stock on July 1, 1974, for $75,000. As the basis to the fund of the stock is $80,000 with respect to fund property, X realizes a long-term capital loss on the sale (the difference between the amount received by the fund on the sale of the stock, $75,000, and the basis to the fund of the stock, $80,000), of $5,000, an amount equal to which is required to be charged against the fund's capital gain account under § 391.4(e). Under subparagraph (2) of this paragraph, X recognizes $70,000 of long-term capital gain with respect to nonfund property on the sale which is includible in its gross income for 1974.

Example (*4*). The facts are the same as in example (2), except that on July 1, 1974, X makes a qualified withdrawal (as defined in § 391.5(a)) of the stock and uses it to pay indebtedness pursuant to § 391.5(b). On the disposition by X considered to occur under subparagraph (3) of this paragraph on the qualified withdrawal, X recognizes $70,000 of long-term capital gain with respect to nonfund property, which is includible in its gross income for 1974, and a long-term capital gain of $5,000 with respect to fund property, an amount equal to which is allocated to the fund's capital gain account under § 391.4(c). The fund is treated as having a qualified withdrawal of an amount equal to the fair market value of the stock on the day of withdrawal, $85,000 (see subparagraph (3) of this paragraph). In addition, $85,000 is applied against the various accounts in the order provided in § 391.6(b). The basis of the vessel with respect to which the indebtedness was incurred is to be reduced as provided in § 391.6(c).

Example (*5*). The facts are the same as in example (2), except that X withdraws the stock from the fund in a nonqualified withdrawal (as defined in § 391.7(b)). Under subparagraph (4) of this paragraph, X recognizes no gain or loss with respect to fund or nonfund property on such withdrawal. An amount equal to the basis of the stock to the fund ($80,000) is applied against the various accounts in the order provided in § 391.7(c), and is taken into account in computing X's taxable income for 1974 as provided in § 391.7(d). In addition, X must pay interest on the withdrawal as provided in § 391.7(e). The basis to X of the stock is $10,000 notwithstanding the fact that the fair market value of such stock was $85,000 on the day of withdrawal (see paragraph (g)(4) of this section).

§ 391.3 Nontaxability of deposits.

(a) *In general.* Section 607(d) of the Act sets forth the rules concerning the income tax effects of deposits made with respect to ceilings described in section 607(b) and § 391.2. The specific treatment of deposits with respect to each of the subceilings is set forth in paragraph (b) of this section.

(b) *Treatment of deposits*—(1) *Earnings of agreement vessels.* Section 607(d)(1)(A) of the Act provides that taxable income of the party (determined without regard to section 607 of the Act) shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in section 607(b)(1)(A) of the Act and § 391.2(a)(1)(i). For computation of the foreign tax credit, see paragraph (i) of this section.

(2) *Net proceeds from agreement vessels and fund earnings.* (i)(*a*) Section 607(d)(1)(B) provides that gain from a transaction referred to in section 607(b)(1)(C) of the Act and § 391.2(a)(1)(iii) (relating to ceilings on deposits of net proceeds from the sale or other disposition of agreement vessels) is not to be taken into account for purposes of the Code if an amount equal to the net proceeds from transactions referred to in such sections is deposited in the fund. Such gain is to be excluded from gross income of the party for the taxable year to which such deposit relates. Thus, the gain will not be taken into account in ap-

plying section 1231 of the Code for the year to which the deposit relates.

(*b*) [Reserved]

(ii)(*a*) Section 607(d)(1)(C) of the Act provides that the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund and referred to in section 607(b)(1)(D) of the Act and § 391.2(a)(1)(iv) shall not be taken into account for purposes of the Code if an amount equal to such earnings is deposited into the fund. Such earnings are to be excluded from the gross income of the party for the taxable year to which such deposit relates.

(*b*) However, for purposes of the basis adjustment under section 1232(a)(3)(E) of the Code, the ratable monthly portion of original issue discount included in gross income shall be determined without regard to section 607(d)(1)(C) of the Act.

(iii) In determining the tax liability of a party to whom paragraph (b)(1) of this section applies, taxable income, determined after application of paragraph (b)(1) of this section, is in effect reduced by the portion of deposits which represent gain or earnings respectively referred to in paragraph (b)(2) (i) or (ii) of this section. The excess, if any, of such portion over taxable income determined after application of paragraph (b)(1) of this section is taken into account in computing the net operating loss (under section 172 of the Code) for the taxable year to which such deposits relate.

(3) *Time for making deposits.* (i) This section applies with respect to an amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in paragraph (b)(2) (ii), (iii), or (iv) of this section for the making of such deposit or the date the Secretary of Transportation provides, whichever is earlier.

(ii) Except as provided in paragraph (b)(2) (iii) or (iv) of this section, a deposit may be made not later than the last day prescribed by law (including extensions thereof) for filing the party's Federal income tax return for the taxable year to which such deposit relates.

(iii) If the party is a subsidized operator under an operating-differential subsidy contract, and does not receive on or before the 59th day preceding such last day, payment of all or part of the accrued operating-differential subsidy payable for the taxable year, the party may deposit an amount equivalent to the unpaid accrued operating-differential subsidy on or before the 60th day after receipt of payment of the accrued operating-differential subsidy.

(iv) A deposit pursuant to § 391.2(a)(3)(i) (relating to underdeposits caused by audit adjustments) must be made on or before the date prescribed for such a deposit in § 391.2(a)(4).

(4) *Date of deposits.* (i) Except as otherwise provided in paragraphs (b)(4) (ii) and (iii) of this section (with respect to taxable years beginning after December 31, 1969, and prior to January 1, 1972), in § 391.2(a)(2)(i), or in § 391.10(b), deposits made in a fund within the time specified in paragraph (b)(3) of this section are deemed to have been made on the date of actual deposit.

(ii)(*a*) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, where an application for a fund is filed by a taxpayer prior to January 1, 1972, and an agreement is executed and entered into by the taxpayer prior to March 1, 1972,

(*b*) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, where an application for a fund is filed by a taxpayer prior to January 1, 1973, and an agreement is executed and entered into by the taxpayer prior to March 1, 1973, and

(*c*) For taxable years beginning after December 31, 1971, and prior to January 1, 1975, where an agreement is executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year, deposits in a fund which are made within 60 days after the date of execution of the agreement, or on or before the due date, with extensions thereof, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposits relate, whichever day is earlier.

(iii) Notwithstanding paragraph (b)(4) (ii) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (b)(4) (ii) but on or before January 9, 1973, in a fund pursuant to an agreement with the Secretary of Transportation acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(c) *Determination of earnings and profits.* [Reserved]

(d) *Accumulated earnings tax.* As provided in section 607(d)(1)(E) of the Act amounts, while held in the fund, are not to be taken into account in computing the "accumulated taxable income" of the party within the meaning of section 531 of the Code. Amounts while held in the fund are considered held for the purpose of acquiring, constructing, or reconstructing a qualified vessel or barges and containers which are part of the complement of a qualified vessel or the payment of the principal on indebtedness incurred in connection with any such acquisition, construction, or reconstruction. Thus, for example, if the reasonable needs of the business (within the meaning of section 537 of the Code) justify a greater amount of accumulation for providing replacement vessels than can be satisfied out of the fund, such greater amount accumulated outside of the fund shall be considered to be accumulated for the reasonable needs of the business. For a further example, although amounts in the fund are not taken into account in applying the tax imposed by section 531 of the Code, to the extent there are amounts in a fund to provide for replacing a vessel, amounts accumulated outside of the fund to replace the same vessel are not considered to be accumulated for the reasonable needs of the business.

(e) *Nonapplicability of section 1231.* If an amount equivalent to gain from a transaction referred to in section 607(b)(1)(C) of the Act and § 391.2(c)(1) and (5) is deposited into the fund and, therefore, such gain is not taken into account in computing gross income under the provisions of paragraph (b)(2) of this section, then such gain will not be taken into account for purposes of the computations under section 1231 of the Code.

(f) *Deposits of capital gains.* In respect of capital gains which are not included in the gross income of the party by virtue of a deposit to which section 607(d) of the Act and this section apply, the following provisions of the Code do not apply; the minimum tax for tax preferences imposed by section 56 of the Code; the alternative tax imposed by section 1201 of the Code on the excess of the party's net long-term capital gain over his net short-term capital loss; and, in the case of a taxpayer other than a corporation, the deduction provided by section 1202 of the Code of 50 percent of the amount of such excess. However, section 56 may apply upon a nonqualified withdrawal with respect to amounts treated under § 391.7(d)(2) as being made out of the capital gain account.

(g) *Deposits of dividends.* The deduction provided by section 243 of the Code (relating to the deductions for dividends from a domestic corporation received by a corporation) shall not apply in respect of dividends (earned on assets held in the fund) which are deposited into a fund, and which, by virtue of such deposits and the provisions of section 607(d) of the Act and this section, are not included in the gross income of the party.

(h) *Presumption of validity of deposit.* All amounts deposited in the fund shall be presumed to have been deposited pursuant to an agreement unless, after an examination of the facts upon the request of the Commissioner of Internal Revenue or his delegate, the Secretary of Transportation determines otherwise. The Commissioner or his delegate will request such a determination where there is a substantial question as to whether a deposit is made in accordance with an agreement.

(i) *Special rules for application of the foreign tax credit*—(1) *In general.* For purposes of computing the limitation under section 904 of the Code on the amount of the credit provided by section 901 of the Code (relating to the foreign tax credit), the party's taxable income from any source without the United States and the party's entire taxable income are to be determined after application of section 607(d) of the Act. Thus, amounts deposited for the taxable year with respect to amounts referred to in section 607(b)(1)(A) of the Act and § 391.2(a)(1)(i) (relating to taxable income attributable to the operation of agreement vessels) shall be treated as a deduction in arriving at the party's taxable income from sources without the United States (subject to the apportionment rules and paragraph (i)(2) of this section) and the party's entire taxable income for the taxable year. Amounts deposited with respect to gain described in section 607(d)(1)(B) of the Act and § 391.2(c) (relating to net proceeds from the sale or other disposition of an agreement vessel and net proceeds from insurance or indemnity) and amounts deposited with respect to earnings described in section 607(d)(1)(C) of the Act and paragraph (b)(2)(ii) (relating to earnings from the investment and reinvestment of amounts held in a fund) of this section are not taken into account for purposes of the Code and hence are not included in the party's taxable income from sources without the United States or in the party's entire taxable income for purposes of this paragraph.

(2) *Apportionment of taxable income attributable to agreement vessels.* For purposes of computing the overall limitation under section 904(a)(2) of the Code the amount of the deposit made with respect to taxable income attributable to agreement vessels pursuant to § 391.2(a)(1)(i) which is allocable to sources without the United States is the total amount of such deposit multiplied by a fraction the numerator of which is the gross income from sources without the United States from the operation of agreement vessels and the denominator of which is the total gross income from the operation of agreement vessels computed as provided in § 391.2(b)(2). For purposes of this paragraph, gross income from sources without the United States attributable to the operation of agreement vessels is to be determined under sections 61 through 863 of the Code and under the taxpayer's usual method of accounting provided such method is reasonable and in keeping with sound accounting practice. Any computation under the per-country limitation of section 904(a)(1) shall be made in the manner consistent with the provisions of the preceding sentences of this paragraph.

§ 391.4 Establishment of accounts.

(a) *In general.* Section 607(e)(1) of the Act requires that three bookkeeping or memorandum accounts are to be established and maintained within the fund: The capital account, the capital gain account, and the ordinary income account. Deposits of the amounts under the subceilings in section 607(b) of the Act and § 391.2 are allocated among the accounts under section 607(e) of the Act and this section.

(b) *Capital account.* The capital account shall consist of:

(1) Amounts referred to in section 607(b)(1)(B) of the Act and § 391.2(a)(1)(ii) (relating to deposits for depreciation),

(2) Amounts referred to in section 607(b)(1)(C) of the Act and § 391.2(a)(1)(iii) (relating to deposits of net proceeds from the sale or other disposition of agreement vessels) other than that portion thereof which represents gain not taken into account for purposes of computing gross income by reason of section 607(d)(1)(B) of the Act and § 391.3(b)(2) (relating to nontaxability of gain from the sale or other disposition of an agreement vessel),

(3) Amounts representing 85 percent of any dividend received by the fund with respect to which the party would, but for section 607(d)(1)(C) of the Act and § 391.3(b)(2)(ii) (relating to nontaxability of deposits of earnings from investment and reinvestment of

amounts held in a fund), be allowed a deduction under section 243 of the Code, and

(4) Amounts received by the fund representing interest income which is exempt from taxation under section 103 of the Code.

(c) *Capital gain account.* The capital gain account shall consist of amounts which represent the excess of (1) deposits of long-term capital gains on property referred to in section 607(b)(1) (C) and (D) of the Act and § 391.2(a)(1) (iii) and (iv) (relating respectively to certain agreement vessels and fund assets), over (2) amounts representing losses from the sale or exchange of assets held in the fund for more than 6 months (for purposes of this section referred to as "long-term capital losses"). For purposes of this paragraph and paragraph (d)(2) of this section, an agreement vessel disposed of at a gain shall be treated as a capital asset to the extent that gain thereon is not treated as ordinary income, including gain which is ordinary income under section 607(g)(5) of the Act (relating to treatment of gain on disposition of a vessel with a reduced basis) and § 391.6(e) or under section 1245 of the Code (relating to gain from disposition of certain depreciable property). For provisions relating to the treatment of short-term capital gains on certain transactions involving agreement vessels or realized by the fund, see paragraph (d) of this section. For rules relating to the treatment of capital losses on assets held in the fund, see paragraph (e) of this section.

(d) *Ordinary income account.* The ordinary income account shall consist of:

(1) Amounts referred to in section 607(b)(1)(A) of the Act and § 391.2(a)(1)(i) (relating to taxable income attributable to the operation of an agreement vessel),

(2) Amounts representing (i) deposits of gains from the sale or exchange of capital assets held for 6 months or less (for purposes of this section referred to as "short-term capital gains") referred to in section 607(b)(1) (C) or (D) of the Act and § 391.2(a)(1)(iii) and (iv) (relating respectively to certain agreement vessels and fund assets), reduced by (ii) amounts representing losses from the sale or exchange of capital assets held in the fund for 6 months or less (for purposes of this section referred to as "short-term capital losses"). For rules relating to the treatment of certain agreement vessels as capital assets, see paragraph (c) of this section,

(3) Amounts representing interest (not including any tax-exempt interest referred to in section 607(e)(2)(D) of the Act and paragraph (b)(4) of this section) and other ordinary income received on assets held in the fund (not including any dividend referred to in section 607(e)(2)(C) of the Act and paragraph (d)(5) of this section),

(4) Amounts representing ordinary income from a transaction (involving certain net proceeds with respect to an agreement vessel) described in section 607(b)(1)(C) of the Act and § 391.2(a)(1)(iii), including gain which is ordinary income under section 607(g)(5) of the Act and § 391.6(e) (relating to treatment of gain on the disposition of a vessel with a reduced basis) or under section 1245 of the Code (relating to gain from disposition of certain depreciable property), and

(5) Fifteen percent of any dividend referred to in section 607(e)(2)(C) of the Act and paragraph (b)(3) of this section received on any assets held in the fund.

(e) *Limitation on deduction for capital losses on assets held in a fund.* Except on termination of a fund, long-term (and short-term) capital losses on assets held in a fund shall be allowed only as an offset to long-term (and short-term) capital gains on assets held in the fund, but only if such gains are deposited into the fund, and shall not be allowed as an offset to any capital gains on assets not held in the fund. The net long-term capital loss of the fund for the taxable year shall reduce the earliest long-term capital gains in the capital gain account at the beginning of the taxable year and the next short-term capital loss for the taxable year shall reduce the earliest short-term capital gains remaining in the ordinary income account at the beginning of the taxable year. Any such losses that are in excess of the capital gains in the respective accounts shall reduce capital gains deposited into the respective accounts in subsequent years (without regard to section 1212, relating to capital loss carrybacks and carryovers). On termination of a fund, any net long-term capital loss in the capital gain account and any net short-term capital loss remaining in the ordinary income accounts is to be taken into account for purposes of computing the party's taxable income for the year of termination as a long-term or short-term (as the case may be) capital loss recognized in the year the fund is terminated. With respect to the determination of the basis to a fund of assets held in such fund, see § 391.2(g).

§ 391.5 Qualified withdrawals.

(a) *In general.* (1) A qualified withdrawal is one made from the fund during the taxable year which is in accordance with section 670(f)(1) of the Act, the agreement, and with regulations prescribed by the Secretary of Transportation and which is for the acquisition, construction, or reconstruction of a qualified vessel (as defined in § 391.11(a)(2)) or barges and containers which are part of the complement of a qualified vessel (or shares in such vessels, barges, and containers), or for the payment of the principal of indebtedness incurred in connection with the acquisition construction, or reconstruction of such qualified vessel (or a barge or container which is part of the complement of a qualified vessel).

(2) For purposes of this section the term "share" is used to reflect an interest in a vessel and means a proprietary interest in a vessel such as, for example, that which results from joint ownership. Accordingly, a share within the meaning of § 391.2(f) (relating to the definition of "agreement vessel" for the purpose of making deposits) will not necessarily be sufficient to be treated as a share within the meaning of this section.

(3) For purposes of this section, the term "acquisition" means any of the following:

(i) Any acquisition, but only to the extent the basis of the property acquired in the hands of the transferee is its cost. Thus, for example, if a party transfers a vessel and $1 million in an exchange for another vessel which qualifies for nonrecognition of gain or loss under section 1031(a) of the Code (relating to like-kind exchange), there is an acquisition to the extent of $1 million.

(ii) With respect to a lessee's interest in a vessel, expenditures which result in increasing the amounts with respect to which a deduction for depreciation (or amortization in lieu thereof) is allowable.

(b) *Payments on indebtedness.* Payments on indebtedness may constitute qualified withdrawals only if the party shows to the satisfaction of the Secretary of Transportation a direct connection between incurring the indebtedness and the acquisition, construction, or reconstruction of a qualified vessel or its complement of barges and containers whether or not the indebtedness is secured by the vessel or its complement of barges and containers. The fact that an indebtedness is secured by an interest in a qualified vessel, barge, or container is insufficient by itself to demonstrate the necessary connection.

(c) *Payments to related persons.* Notwithstanding paragraph (a) of this section, payments from a fund to a person owned or controlled directly or indirectly by the same interests as the party within the meaning of section 482 of the Code and the regulations thereunder are not to be treated as qualified withdrawals unless the party demonstrates to the satisfaction of the Secretary of Transportation that no part of such payment constitutes a dividend, a return of capital, or a contribution to capital under the Code.

(d) *Treatment of fund upon failure to fulfill obligations.* Section 607(f)(2) of the Act provides that if the Secretary of Transportation determines that any substantial obligation under the agreement is not being fulfilled, he may, after notice and opportunity for hearing to the party, treat the entire fund, or any portion thereof, as having been withdrawn as a nonqualified withdrawal. In determining whether a party has breached a substantial obligation under the agreement, the Secretary will consider among other things, (1) the effect of the party's action or omission upon his ability to carry out the purposes of the fund and for which qualified withdrawals are permitted under section 607(f)(1) of the Act, and (2) whether the party has made material misrepresentations in connection with the agreement or has failed to disclose material information. For the income tax treatment of nonqualified withdrawals, see § 391.7.

§ 391.6 Tax treatment of qualified withdrawals.

(a) *In general.* Section 607(g) of the Act and this section provide rules for the income tax treatment of qualified withdrawals including the income tax treatment on the disposition of assets acquired with fund amounts.

(b) *Order of application of qualified withdrawals against accounts.* A qualified withdrawal from a fund shall be treated as being made: First, out of the capital account; second, out of the capital gain account; and third, out of the ordinary income account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest qualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made.

(c) *Reduction of basis.* (1) If any portion of a qualified withdrawal for the acquisition, construction, or reconstruction of a vessel, barge, or container (or share therein) is made out of the ordinary income account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to such portion.

(2) If any portion of a qualified withdrawal for the acquisition, construction or reconstruction of a vessel, barge, or container (or share therein) is made out of the capital gain account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to—

(i) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Code), or

(ii) One-half of such portion, in the case of any other person.

(3) If any portion of a qualified withdrawal to pay the principal of an indebtedness is made out of the ordinary income account or the capital gain account, then the basis of the vessel, barge, or container (or share therein) with respect to which such indebtedness was incurred is reduced in the manner provided by paragraphs (c) (1) and (2) of this section. If the aggregate amount of such withdrawal from the ordinary income account and capital gain account would cause a basis reduction in excess of the party's basis in such vessel, barge, or container (or share therein), the excess is applied against the basis of other vessels, brges, or containers (or shares therein) owned by the party at the time of withdrawal in the following order: (i) Vessels, barges, or containers (or shares therein) which were the subject of qualified withdrawals in the order in which they were acquired, constructed, or reconstructed; (ii) agreement vessels (as defined in section 607(k)(3) of the Act and § 391.11(a)(3)) and barges and containers which are part of the complement of an agreement vessel (or shares therein) which were not the subject of qualified withdrawals, in the order in which such vessels, barges, or containers (or shares therein) were acquired by the party; and (iii) other vessels, barges, and containers (or shares therein), in the order in which they were acquired by the party. Any amount of a withdrawal remaining after the application of this paragraph is to be treated as a nonqualified withdrawal. If the indebtedness was incurred to acquire two or more vessels, barges, or containers (or shares therein), then the basis reduction in such vessels, barges, or containers (or shares therein) is to be made pro rata in proportion to the adjusted basis of such vessels, barges, or containers (or shares therein) computed, however, without regard to this section and adjustments under section 1016(a) (2) and (3) of the Code for depreciation or amortization.

(d) *Basis for depreciation.* For purposes of determining the allowance for depreciation under section 167 of the Code in respect of any property which has been acquired, constructed, or reconstructed from qualified withdrawals, the adjusted basis for determining gain on such property is determined after applying paragraph (c) of this section. In the case of reductions in the basis of any property resulting from the application of paragraph (c)(3) of this section, the party may adopt a method of accounting whereby (1) payments shall reduce the basis of the property on the day such payments are actually made, or (2) payments made at any time during the first half of the party's taxable year shall reduce the basis of the property on the first day of the taxable year, and payments made at any time during the second half of the party's taxable year shall reduce the basis of the property on the first day of the succeeding taxable year. For requirements respecting the change of methods of accounting, see § 1.446-1(e)(3) of the Income Tax Regulations of this chapter.

(e) *Ordinary income treatment of gain from disposition of property acquired with qualified withdrawals.* [Reserved]

§ 391.7 Tax treatment of nonqualified withdrawals.

(a) *In general.* Section 607(h) of the Act provides rules for the tax treatment of nonqualified withdrawals, including rules for adjustments to the various accounts of the fund, the inclusion of amounts in income, and the payment of interest with respect to such amounts.

(b) *Nonqualified withdrawals defined.* Except as provided in section 607 of the Act and § 391.8 (relating to certain corporate reorganizations, changes in partnerships, and transfers by reason of death), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal which is subject to tax in accordance with section 607(h) of the Act and the provisions of this section. Examples of nonqualified withdrawals are amounts remaining in a fund upon termination of the fund, and withdrawals which are treated as nonqualified withdrawals under section 607(f)(2) of the Act and § 391.5(d) (relating to failure by a party to fulfill substantial obligation under agreement) or under the second sentence of section 607(g)(4) of the Act and § 391.6(c)(3) (relating to payments against indebtedness in excess of basis).

(c) *Order of application of nonqualified withdrawals against deposits.* A nonqualified withdrawal from a fund shall be treated as being made: First, out of the ordinary income account; second, out of the capital gain account; and third, out of the capital account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest nonqualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. Nonqualified withdrawals for research, development, and design expenses incident to new and advanced ship design, machinery, and equipment, and any amount treated as a nonqualified withdrawal under the second sentence of section 607(g)(4) of the Act and § 391.6(c)(3), shall be applied against the deposits within a particular account on a last-in-first-out basis. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made. For special rules concerning the withdrawal of contingent deposits of net proceeds from the installment sale of an agreement vessel, see § 391.2(c)(6).

(d) *Inclusion in income.* (1) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the ordinary income account is to be included in gross income as an item of ordinary income for the taxable year in which the withdrawal is made.

(2) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the capital gain account is to be included in income as an item of long-term capital gain recognized during the taxable year in which the withdrawal is made.

(3) For effect upon a party's taxable income of capital losses remaining in a

fund upon the termination of a fund (which, under paragraph (b) of this section, is treated as a nonqualified withdrawal of amounts remaining in the fund), see § 391.4(e).

(e) *Interest.* (1) For the period on or before the last date prescribed by law, including extensions thereof, for filing the party's Federal income tax return for the taxable year during which a nonqualified withdrawal is made, no interest shall be payable under section 6601 of the Code in respect of the tax on any item which is included in gross income under paragraph (d) of this section, and no addition to such tax for such period shall be payable under section 6651 of the Code. In lieu of the interest and additions to tax under such sections, simple interest on the amount of the tax attributable to any item included in gross income under paragraph (d) of this section is to be paid at the rate of interest determined for the year of withdrawal under paragraph (e)(2) of this section. Such interest is to be charged for the period from the last date prescribed for payment of tax for the taxable year for which such item was deposited in the fund to the last date for payment of tax for the taxable year in which the withdrawal is made. Both dates are to be determined without regard to any extensions of time for payment. Interest determined under this paragraph which is paid within the taxable year shall be allowed as a deduction for such year under section 163 of the Code. However, such interest is to be treated as part of the party's tax for the year of withdrawal for purposes of collection and in determining any interest or additions to tax for the year of withdrawal under section 6601 or 6651, respectively, of the Code.

(2) For purposes of section 607(h)(3)(C)(ii) of the Act, and for purposes of certain dispositions of vessels constructed, reconstructed, or acquired with qualified withdrawals described in § 391.6(e), the applicable rate of interest for any nonqualified withdrawal—

(i) Made in a taxable year beginning in 1970 and 1971 is 8 percent.

(ii) Made in a taxable year beginning after 1971, the rate for such year as determined and published jointly by the Secretary of the Treasury or his delegate and the Secretary of Transportation. Such rate shall bear a relationship to 8 percent which the Secretaries determine to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970. The determination of the applicable rate for any such taxable year will be computed by multiplying 8 percent by the ratio which (*a*) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year, bears to (*b*) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined shall be computed to the nearest one-hundredth of 1 percent. If such a determination and publication is made, the latest published percentage shall apply for any taxable year beginning in the calendar year with respect to which publication is made.

(3) No interest shall be payable in respect of taxes on amounts referred to in section 607(h)(2) (i) and (ii) of the Act (relating to withdrawals for research and development and payments against indebtedness in excess of basis) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969.

(f) *Basis and holding period in the case of property purchased by the fund or considered purchased by the fund.* In the case of a nonqualified withdrawal of property other than money which was purchased by the fund (including deposited property considered under § 391.2 (g)(1)(ii) as purchased by the fund), the adjusted basis of the property in the hands of the party is its adjusted basis to the fund on the day of the withdrawal. In determining the period for which the taxpayer has held the property withdrawn in a nonqualified withdrawal, there shall be included only the period beginning with the date on which the withdrawal occurred. For basis and holding period in the case of nonqualified withdrawals of property other than money deposited into the fund, see § 391.2(g)(4).

§ 391.8 Certain corporate reorganizations and changes in partnerships, and certain transfers on death. [Reserved]

§ 391.9 Consolidated returns. [Reserved]

§ 391.10 Transitional rules for existing funds.

(a) *In general.* Section 607(j) of the Act provides that any person who was maintaining a fund or funds under section 607 of the Merchant Marine Act, 1936, prior to its amendment by the Merchant Marine Act of 1970 (for purposes of this part referred to as "old fund") may continue to maintain such old fund in the same manner as under prior law subject to the limitations contained in section 607(j) of the Act. Thus, a party may not simultaneously maintain such old fund and a new fund established under the Act.

(b) *Extension of agreement to new fund.* If a person enters into an agreement under the Act to establish a new fund, he may agree to the extension of such agreement to some or all of the amounts in the old fund and transfer the amounts in the old fund to which the agreement is to apply from the old fund to the new fund. If an agreement to establish a new fund is extended to amounts from an old fund, each item in the old fund to which such agreement applies shall be considered to be transferred to the appropriate account in the manner provided for in § 391.8(d) in the new fund in a nontaxable transaction which is in accordance with the provisions of the agreement under which such old fund was maintained. For purposes of determining the amount of interest under section 607(h)(3)(C) of the Act and § 391.7(e), the date of deposit of any item so transferred shall be deemed to be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

§ 391.11 Definitions.

(a) As used in the regulations in this part and as defined in section 607(k) of the Act—

(1) The term "eligible vessel" means any vessel—

(i) Constructed in the United States, and if reconstructed, reconstructed in the United States,

(ii) Documented under the laws of the United States, and

(iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States. Any vessel which was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the U.S. foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of paragraph (a)(1) of this section and the requirements of paragraph (a)(2)(i) of this section.

(2) The term "qualified vessel" means any vessel—

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States,

(ii) Documented under the laws of the United States, and

(iii) Which the person maintaining the fund agrees with the Secretary of Transportation will be operated in the U.S. foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term "agreement vessel" means any eligible vessel or qualified vessel which is subject to an agreement entered into under section 607 of the Act.

(4) The term "vessel" includes cargo handling equipment which the Secretary of Transportation determines is intended for use primarily on the vessel. The term "vessel" also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated in the Great Lakes.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulation in this part, except as otherwise provided in the Act or this part, have the same meaning as in the Code and the regulations thereunder.

[29 FR 10464, July 28, 1964]

PARTS 392–399 [RESERVED]

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401.720 Authority of the Director over operations.

AUTHORITY: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; section 401.105 also issued under the authority of 44 U.S.C. 3507.

Subpart A—General

§ 401.100 Purpose.

The purpose of this part is to carry out those provisions of the Great Lakes Pilotage Act of 1960 (74 Stat. 259, 46 U.S.C. 216) relating to the registration of United States pilots, the formation of pools by voluntary associations of United States registered pilots and the establishment of rates, charges, and other conditions or terms for services performed by registered pilots to meet the provisions of the Act.

[26 FR 951, Jan. 31, 1961]

§ 401.105 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Diretor of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part of section where identified or described	Current OMB control No.
Part 401	2115–0022

[49 FR 38122, Sept. 27, 1984]

§ 401.110 Definitions.

(a) The following terms where used in this part shall have the following meanings:

(1) "Act" means the Great Lakes Pilotage Act of 1960, as amended (Pub. L. 86-555, 74 Stat. 259-262; 46 U.S.C. 216 through 216i).

(2) "Commandant" means Commandant, U.S. Coast Guard, Washington, DC 20593-0001.

(3) "Canadian Registered Pilot" means a person, other than a member of the regular complement of a vessel, who holds an appropriate Canadian license issued by an agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration under the provisions of Subpart B of this part.

(4) "Movage" means the underway movement of a vessel in navigation from or to a dock, pier, wharf, dolphins, buoys, or anchorage other than a temporary anchorage for navigational or traffic purposes in such manner as to constitute a distinct separate movement not a substantive portion of a translake movement on arrival or departure, within the geographic confines of a harbor or port complex within such harbor.

(5) "Great Lakes" means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the St. Lawrence River as far east as Saint Regis, and adjacent port areas.

(6) "Other officer" means the master or any other member of the regular complement of the vessel concerned who is qualified for the navigation of those United States waters of the Great Lakes which are not designated by the President in Proclamation No. 3385 dated December 22, 1960 and who is either licensed by the Secretary or certificated by an appropriate agency of Canada.

(7) "Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

(8) "United States registered pilot" means a person, other than a member of the regular complement of a vessel, who holds a license authorizing navigation on the Great Lakes and suitably endorsed for pilotage on routes specified therein, issued under the authority of the provisions of Title 52 of the Revised Statutes, and who is also registered under the provisions of Subpart B of this part.

(9) "Director" means Director, Great Lakes Pilotage Staff, on the Staff of the Commander, 9th Coast Guard District (dgp), Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

(10) Rate computation definitions:

(i) "Length" means the distance between the forward and after extremities of the ship.

(ii) "Breadth" means the maximum breadth to the outside of the shell plating of the ship.

(iii) "Depth" means the vertical distance at amidships from the top of the keel plate to the uppermost continuous deck, fore and aft, and which extends to the sides of the ship. The continuity of a deck shall not be considered to be affected by the existence of tonnage openings, engine spaces, or a step in the deck.

(11) "Person" includes an individual, registered pilot, partnership, corpora-

tion, association, voluntary association, authorized pool, or public or private organization, other than an agency.

(12) "Applicant Pilot" means a person who holds a license as a master, mate, or pilot issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons or over, operating on the Great Lakes or oceans, and who has applied for registration under the provisions of Subpart B of this part. Those persons qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes.

(13) "Applicant Trainee" means a person who is in training to become an Applicant Pilot with an organization authorized to provide pilotage services.

(14)"Pool" means an organization authorized to provide pilotage services.

(15) "Comparable experience" means experience that is similar to the experience obtained by serving as an officer on a vessel. Training and experience while participating in a pilot training program of an authorized pilot organization is considered equivalent on a day for day basis to experience as an officer on a vessel. The training program of the authorized pilot organization must, however, include regularly scheduled trips on vessels of 4,000 gross tons or over in the company of a registered pilot.

[26 FR 951, Jan. 31, 1961, as amended at 31 FR 9064, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGFR 68-78, 33 FR 9823, July 9, 1968; CGFR 70-29a, 35 FR 10434, June 26, 1970; CGD 74-233, 40 FR 41526, Sept. 8, 1975; CGD 78-144a, 44 FR 19362, Apr. 2, 1979; CGD 78-1445, 44 FR 64837, Nov. 8, 1979; 53 FR 34538, Sept. 7, 1988]

§ 401.120 Federal reservation of pilotage regulations.

No state, municipal, or other local authority shall require the use of pilots or regulate any aspect of pilotage in any of the waters specified in the Act. Only those persons registered as United States Registered Pilots or Canadian Registered Pilots as defined in this subpart may render pilotage services on any vessel subject to the Act and the Memorandum of Arrangements, Great Lakes Pilotage.

[26 FR 951, Jan. 31, 1961]

Subpart B—Registration of Pilots

§ 401.200 Application for registration.

(a) An application for registration as a U.S. Registered Pilot shall be made on Form CG-4509, which shall be submitted together with a completed fingerprint chart and two full-face photographs, 1½ inches by 2 inches, signed on the face. These forms may be obtained from the Director.

[32 FR 14220, Oct. 13, 1967, as amended by CGD 78-144b, 44 FR 64837, Nov. 8, 1979]

§ 401.210 Requirements and qualifications for registration.

(a) No person shall be registered as a United States Registered Pilot unless:

(1) The individual holds a license as a master, mate, or pilot, issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons, or over, operating on the Great Lakes or oceans. Those applicants qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a licensed deck officer.

(2) He is a citizen of the United States.

(3) He is of good moral character and temperate habits.

(4) He is physically competent to perform the duties of a U.S. Registered Pilot and meets the medical requirements prescribed by the Commandant.

(5) The individual has not reached the age of 70.

(6) He possesses a validated Merchant Mariner's Document issued by the Coast Guard.

(7) He agrees that he will be available for service under the terms and

conditions as may be approved or prescribed by the Commandant.

(8) He has complied with the requirements set forth in § 401.220(b) for Applicant Pilots if applying for registration for waters in which a pilotage pool is authorized.

(9) He agrees to comply with all applicable provisions of this part and amendments thereto.

(b) Any person registered as a United States Registered Pilot pursuant to the provisions of this part whose application contains false or misleading statements furnished by the applicant in furtherance of his application shall be in violation of these regulations and may be proceeded against under § 401.250(a) or § 401.500.

[29 FR 10464, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 8, 1979]

§ 401.211 Requirements for training of Applicant Pilots.

(a) The Director shall determine the number of Applicant Pilots required to be in training by each Association authorized to form a pool in order to assure an adequate number of Registered Pilots. No Applicant Pilot shall be selected for training unless:

(1) He meets the requirements and qualifications set forth in paragraphs (a) (1) through (4), (6), (7), and (9) of § 401.210.

(2) He shall not have reached the age of 60.

(3) He possesses a radar observer competency certificate or equivalent U.S. Coast Guard endorsement.

(b) For purpose of determining whether an applicant meets the experience requirements contained in § 401.210(a)(1), not more than twelve months of "comparable experience" may be used in fulfilling the twenty-four month experience requirement.

(c) The Director shall approve the United States Registered Pilots that are designated by the authorized pilot organization to provide training to those pilots that are in training to be registered pilots.

(d) Persons desiring to be considered as an Applicant Pilot shall file with the Director a completed Application Form, CG-4509, in duplicate, together with two full-face photographs, 1½ inches by 2 inches, signed on the face, and a completed fingerprint chart.

(e) Individuals selected as Applicant Pilots by the Director shall be issued a U.S. Coast Guard Applicant Pilot Identification Card, which shall be valid until such time as (1) the applicant is registered as a pilot under § 401.210; (2) the applicant withdraws from the training program, or (3) upon withdrawal by the Director.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 9, 1979]

§ 401.220 Registration of pilots.

(a) The Director shall determine the number of pilots required to be registered in order to assure adequate and efficient pilotage service in the United States waters of the Great Lakes and to provide for equitable participation of United States Registered Pilots with Canadian Registered Pilots in the rendering of pilotage services.

(b) Registration of pilots shall be made from among those Applicant Pilots who have (1) completed the minimum number of trips prescribed by the Commandant over the waters for which application is made on oceangoing vessels, in company with a Registered Pilot, within 1 year of date of application, (2) completed a course of instruction for Applicant Pilots prescribed by the association authorized to establish the pilotage pool, (3) satisfactorily completed a written examination prescribed by the Director, evidencing his knowledge and understanding of the Great Lakes Pilotage Regulations, Rules and Orders; the Memorandum of Arrangements, Great Lakes Pilotage, between the United States and Canada; and other related matters including the working rules and operating procedures of his district, given at such time and place as the Director may designate within the pilotage district of the Applicant Pilot.

(c) The Pilot Association authorized to establish a pool in which an Applicant Pilot has qualified for registration under paragraph (b) of this section shall submit to the Director in writing its recommendations together with its reasons for the registration of the Applicant.

(d) Subject to the provisions of paragraphs (a), (b), and (c) of this section, a pilot found to be qualified under this subpart shall be issued a Certificate of Registration, valid for a term of five (5) years or until the expiration of his master's, mate's or pilot's license issued under the authority of Title 52 of the Revised Statutes or until the pilot reaches age 70, whichever occurs first.

(e) The Director may, when necessary to assure adequate and efficient pilotage service, issue a temporary certificate of registration for a period of less than 1 year to any person found qualified under this subpart regardless of age.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; CGFR 67-64, 32 FR 14221, Oct. 13, 1967; CGFR 69-84, 34 FR 12583, Aug. 1, 1969; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 9, 1979]

§ 401.230 Certificates of Registration.

(a) A Certificate of Registration shall describe the part or parts of the Great Lakes within which the pilot is authorized to perform pilotage services and such description shall not be inconsistent with the terms of the pilotage authorization in his master's, mate's, or pilot's license issued under the authority of Title 52 of the Revised Statutes.

(b) A Certificate of Registration shall not authorize the holder to board any vessel, or to serve as a pilot of any vessel, without the permission of the owner or master. A Certificate of Registration shall be in the possession of a pilot at all times when he is in the service of a vessel, and shall be displayed upon demand of the owner or master, any United States Coast Guard officer or inspector, or a representative of the Director.

(c) A Certificate of Registration evidencing registration of the holder is the property of the U.S. Coast Guard and it shall not be pledged, deposited, or surrendered to any person except as authorized by this part. A Certificate of Registration may not be photostated or copied. A Certificate which has expired without renewal, or renewal of which has been denied under the provisions of this section, shall be surrendered to the Director upon demand.

(d) An application for a replacement of a lost, damaged, or defaced Certificate of Registration shall be made in writing to the Director together with two full-face photographs, 1½ inches by 2 inches, signed on the face. A replacement fee of five dollars ($5) by check or money order, drawn to the order of the U.S. Coast Guard, shall accompany any such application. A Certificate issued as a replacement for a lost, damaged, or defaced Certificate shall be marked so as to indicate that it is a replacement. Upon receipt of a Certificate issued as a replacement, the damaged or defaced Certificate shall be surrendered to the Director.

(e) A Certificate of Registration may be voluntarily surrendered to the Director by a Registered Pilot at any time such pilot no longer desires to perform pilotage services; however, in the event such Registered Pilot has been served with a notice of hearing pursuant to § 401.250, a voluntary surrender of the Certificate of Registration shall be at the option of the Director.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979]

§ 401.240 Renewal of Certificates of Registration.

(a) An application for renewal of a Certificate of Registration shall be submitted to the Director together with two full-face photographs, 1½ inches by 2 inches, signed on the face, at least 15 days before the expiration date of the existing Certificate. The form for renewal of Certificates of Registration may be obtained from the Director. A renewal fee of 5 dollars by check or money order, drawn to the order of the U.S. Coast Guard, shall accompany an application for renewal of registration, which will be refunded if registration is not renewed. Failure of a Registered Pilot to comply with these requirements or file a complete and sufficient application may constitute cause for denying renewal of the Certificate of Registration.

(b) No Certificate of Registration shall be renewed unless the applicant for renewal thereof meets the requirements and qualifications set forth in § 401.210 for issuance of an original Certificate of Registration; excepting that compliance with § 401.210(a)(4) shall not be required if the examination was satisfactorily passed on a previous application for registration within six (6) months next preceding the date of application for renewal.

(c) If the Director determines that there is good cause for denying renewal of a Certificate of Registration, the applicant shall be notified in writing of such determination and the cause thereof. The applicant may thereupon apply within fifteen (15) days of the receipt of such notice for a hearing in regard to the cause for the denying of a renewal of the Certificate, which hearing shall be granted.

(d) In any case in which the applicant has made timely and sufficient application for renewal of his registration, no such registration shall expire until such application shall have been finally determined by the Commandant unless the public health, interest, or safety requires otherwise.

(e) Upon receipt of a renewal Certificate of Registration, the expired Certificate shall be surrendered to the Director.

[29 FR 10465, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967; CGFR 68-57, 33 FR 6479, Apr. 27, 1968]

§ 401.250 Suspension and revocation of Certificates of Registration.

(a) Certificate of Registration issued pursuant to the provisions of this part may be suspended or revoked upon a determination on the record, after opportunity for a hearing in accordance with the Administrative Procedure Act, as amended (5 U.S.C. 551 through 559), that the pilot (holder) has violated any provision of this chapter or is no longer eligible for registration.

(b) When a Certificate of Registration which is about to expire is suspended, the renewal of such certificate may be withheld until the expiration of the period of suspension.

(c) Whenever the public health, interest, or safety requires, the Director may deny a Registered Pilot dispatch for a period not to exceed 30 days pending investigation by the Coast Guard or other agency having jurisdiction in the matter.

(d) Every U.S. Registered Pilot shall, whenever his license is revoked or suspended under the provisions of Part 137 of this title, deliver his Certificate of Registration simultaneously with his license to the U.S. Coast Guard. If the license is suspended, the Certificate of Registration will be held with the suspended license and returned to the holder upon expiration of the suspension period.

[32 FR 14221, Oct. 13, 1967, as amended by CGFR 68-57, 33 FR 6478, Apr. 27, 1968]

§ 401.260 Reports.

(a) A marine accident which occurs while a U.S. Registered Pilot is in the service of a vessel in U.S. or Canadian waters of the Great Lakes shall be reported by the Registered Pilot to the Director as soon as possible, but not later than 15 days after the accident. The report shall name and describe the vessel or vessels involved, and shall describe the accident, including type of accident, location, time, prevailing weather, damage to the vessel or vessels or property, and injury to persons or lives lost. This report does not relieve the pilot of responsibility for submitting any report required by other government agencies of the United States or Canada.

(b) Every U.S. Registered Pilot shall file with the Director any change of his mailing address within 15 days after the change.

(c) Every authorized pilotage pool of U.S. Registered Pilots rendering pilotage service shall submit, by the 10th day of the month following, a monthly report of availability, on a form provided by the Director, of all U.S. Registered Pilots and Applicant Pilots of that pool. The report shall include the availability of Canadian Registered Pilots who are assigned to that pool for administrative purposes. The report shall list the name of each pilot and show his availability status for each day of the month as: available, unavailable due to illness or injury, unavailable with advance notice for personal reasons, unavailability authorized by the pool for business reasons, unavailable without advance notice or unaccounted for, unavailable for disciplinary reasons. The report shall be maintained on a daily basis by an officer or employee of the pool, who shall be responsible for the completeness and accuracy of the report.

[31 FR 9065, July 1, 1966; 32 FR 14221, Oct. 13, 1967]

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

§ 401.300 Authorization for establishment of pools.

(a) Voluntary associations of U.S. registered pilots will be authorized to establish a pool or pools in the following areas of the U.S. waters of the Great Lakes designated by the President in Proclamation No. 3385 of December 22, 1960, as amended by Proclamation No. 3855 of June 10, 1968, or in such other areas as the Director may deem necessary to assure adequate and efficient pilotage services for the U.S. waters of the Great Lakes:

(1) *District No. 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° True) between Carruthers Point Light and South Side Light extended to the New York shore.

(2) *District No. 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° True) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and Northern approaches thereto south of latitude 43°05′30″ N.

(3) *District No. 3.* All U.S. waters of the St. Marys River, Sault Sainte Marie Locks and approaches thereto between latitude 45°59′ N. at the southern approach and longitude 84°33′ W. at the northern approach.

(b) The Director shall determine the number of pools that will be authorized for establishment by voluntary associations of United States registered pilots in order to assure adequate and efficient pilotage services for the United States waters of the Great Lakes.

[26 FR 952, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967; CGFR 68-78, 33 FR 9823, July 9, 1968]

§ 401.310 Application for establishment of pools.

An application by a voluntary association for authorization to establish a pool shall be filed on the form to be obtained from the Director. The form shall require, among other things, furnishing of the following information:

(a) The name and address of the association.

(b) The names and addresses of all officers of the association.

(c) Type of organization (partnership, corporation, etc.).

(d) Copies of articles of incorporation, bylaws, partnership agreements, etc.

(e) The names and addresses of all stockholders or partners, together with the extent of their financial interest.

(f) A copy of the financial statements of the association.

(g) The names, addresses, and Certificates of Registration numbers of all member pilots.

(h) The District or area in which members of the association desire to render pilotage services.

(i) An inventory of owned or leased boats, launches, radio equipment, vehicles, etc., which may be used in the performance of pilotage services.

[26 FR 952, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967]

§ 401.320 Requirements and qualifications for authorization to establish pools.

No voluntary association shall be authorized to establish a pool unless:

(a) The Director determines that a pool is necessary for the efficient dispatching of vessels and the providing of pilotage services in the area concerned.

(b) The stock, equity, or other financial interests coupled with voting rights or exercise of any right of control in the management of the voluntary association is held only by member Registered Pilots registered pursuant to § 401.200, § 401.210, or § 401.220(e), excluding Applicant Pilots.

(c) The voluntary association establishes that it possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain an efficient and effective pilotage service.

(d) The voluntary association agrees that:

(1) Pilotage services will be provided on a first-come, first-serve basis to vessels giving proper notice of arrival time or pilotage service requirements, to the pilotage station, except that pilots will not be required to board vessels which do not provide safe boarding facilities;

(2) It will submit working rules for approval of the Commandant;

(3) It will adopt and use the Uniform System of Accounts, Part 403 of this chapter, and such other accounting procedures and reports as may be prescribed by the Commandant;

(4) It will be subject to audit and inspection by the Coast Guard and will submit by April 1 of each year an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

(5) It will be subject to such other provisions as may be prescribed by the Director governing the operation of and the costs which may be charged in connection with the pools;

(6) It will coordinate on a reciprocal basis its pool operations with similar pool arrangements established by the Canadian Government and pursuant to the provisions of the United States-Canada Memorandum of Arrangements, Great Lakes Pilotage, or any other arrangements established by the United States and Canadian Governments.

[29 FR 10466, July 28, 1964, as amended at 31 FR 9066, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 81-088, 47 FR 13808, Apr. 1, 1982; CGD 88-111, 55 FR 17581, Apr. 25, 1990]

§ 401.330 Certificates of Authorization.

(a) Subject to § 401.300(b), an association that is qualified to establish a pool in a District or area is issued a Certificate of Authorization that is valid until suspended or revoked under the procedures in § 401.335.

(b) A Certificate of Authorization shall be in such form as the Director may prescribe, but shall describe the area of the Great Lakes in which the pool will perform pilotage services. A Certificate of Authorization shall be posted in the principal place of business of an association in such manner so as to be available for examination by members of the association and the public.

[26 FR 953, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967; CG 74-233, 40 FR 41527, Sept. 8, 1975]

§ 401.335 Suspension or revocation of a Certificate of Authorization.

(a) The Director may issue an order to suspend or revoke a Certificate of Authorization if—

(1) The holder of a Certificate of Authorization does not continue to meet the requirements under § 401.320; or

(2) The holder of a Certificate of Authorization does not comply with the requirements of this part.

(b) Before issuing an order to suspend or revoke, the Director notifies the holder of a Certificate of Authorization of the reasons for the proposed suspension or revocation and gives the holder an opportunity to be heard or to comply with the requirements of this part.

(c) If the Director finds that the violation of a requirement of this part involves public health, interest, or safety, or that the violation is willful, the Director may issue an order to suspend the Certificate of Authorization without giving notice under paragraph (b) of this section. The order shall contain the reasons for the Director's action.

(d) A holder who has its Certificate of Authorization suspended under paragraph (c) of this section shall have an opportunity to be heard by notifying the Director in writing.

(e) The Director shall reinstate a Certificate of Authorization that has been suspended under paragraph (b) or (c) of this section when he determines that the holder is complying with this part.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975]

§ 401.340 Compliance with working rules of pools.

(a) United States or Canadian registered pilots utilizing the facilities and dispatching services of any authorized pool shall comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b), and with other rules of the pool that are related to those facilities and services.

(b) The voluntary associations of U.S. Registered Pilots authorized to establish a pilotage pool may require a U.S. Registered Pilot to execute a written authorization for the pool to bill for services, deduct authorized expenses, and to comply with the working rules and other rules of the pool relating to such facilities and services. Facilities and services of the pool may be denied to any U.S. Registered Pilot who fails or refuses to execute such authorizations.

(c) U.S. Registered Pilots who fail to execute such an authorization shall not be considered members of the U.S. pool, and shall not be entitled to reciprocal dispatching and related services by United States and Canadian pilotage pools as provided for by the Memorandum of Arrangements. A U.S. Registered Pilot who fails or refuses to avail himself of the established facilities and services shall be considered as not being continuously available for service pursuant to section 4(a) of the Great Lakes Pilotage Act of 1960 (46 U.S.C. 216 through 216i) and his agreement executed on the Application for Registration as a U.S. Registered Pilot, and may be subject to suspension or revocation proceedings as prescribed by § 401.250.

[26 FR 9647, Oct. 12, 1961, as amended at 31 FR 9066, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 74-233, 40 FR 41527, Sept. 8, 1975]

Subpart D—Rates, Charges, and Conditions for Pilotage Services

§ 401.400 Calculation of pilotage units and determination of weighting factor.

The equivalent pilotage unit number and appropriate weighting factor for each ship shall be computed by utilizing the following formula and table:

(a) Pilotage unit computation:

$$\text{Pilot Unit} = (\text{Length} \times \text{Breadth} \times \text{Depth}) / 10{,}000$$

(b) Weighting factor table:

Range of pilotage units	Weighting factor
0 to 129	1.00
130 to 159	1.15
160 to 189	1.30
190 and over	1.45

(c) The charge for pilotage service is obtained by multiplying the weighting factor, obtained from paragraph (b) of this section by the appropriate basic rate specified in §§ 401.405, 401.410, 401.420, and 401.425.

[CGFR 70-29a, 35 FR 10434, June 26, 1970, as amended by CGD 81-088; 47 FR 13808, Apr. 1, 1982; CGD 84-089, 50 FR 7178, Feb. 27, 1985]

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) *District 1.*

(1) For passage through the District or any part thereof, $10.32 for each statute mile, plus $138 for each lock transited, but with a minimum basic rate of $301 and a maximum basic rate for a through trip of $1322.

(2) For a movage in any harbor, $453.

(b) *District 2.*

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $623.

(2) Between points on Lake Erie west of Southeast Shoal, $368.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, $1085.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $623.

(5) Southeast Shoal to Detroit Pilot Boat, $451.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, $1257.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $809.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $623.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $368.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, $816.

(11) Detroit Pilot Boat to any point on the St. Clair River, $816.

(12) Detroit Pilot Boat to Port Huron Change Point, $634.

(13) Between points on the St. Clair River, $368.

(14) Port Huron Change Point to any point on the St. Clair River, $451.

(c) *District 3.*

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1129.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $947.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $425.

(4) For a movage in any harbor, $425.

[CGD 86-020, 52 FR 11470, Apr. 9, 1987]

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario, $243.

(2) In Lake Erie, $266.

(3) In Lakes Huron, Michigan and Superior, $228.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1, $232.

(2) In District 2, $205.

(3) In District 3, $217.

(c) When in transit of the undesignated waters of Lake Erie, and the vessel's master uses an appropriate certificate in lieu of a pilot, and the pilot is on board, the vessel shall pay a charge calculated on the basic detention rate provided in § 401.420, unless the services of the pilot are utilized and a charge is made under paragraph (a) of this section.

[CGD 86-020, 52 FR 11471, Apr. 9, 1987, as amended by CGD 88-111, 55 FR 17581, Apr. 25, 1990]

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $601 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $601 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $227;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour, with a maximum basis rate of $601 for each 24 hour period.

[CGD 86-020, 52 FR 11471, Apr. 9, 1987]

§ 401.425 Provision for additional pilot.

The Director, Great Lakes Pilotage Staff, U.S. Coast Guard, or the General Manager, Great Lakes Pilotage Authority, Ltd., Canada, may require the assignment of two pilots to a ship upon request of the ship or when in his judgment, because of anticipated long transit, uncommon ship size, adverse weather or sea conditions or other abnormal circumstances, the assignment of two pilots is considered necessary for the safe navigation of the ship. The Director or General Manager shall direct which of the pilots is to be in charge, as circumstances require. The charge to the ship shall be twice the appropriate charge provided for in §§ 401.405, 401.410, and 401.420. This section does not apply to a ship in a direct transit of the undesignated waters of Lake Erie between Southeast Shoal and Port Colborne unless the ship is required by law to have a registered pilot on board in these waters.

[CGD 80-148, 46 FR 18717, Mar. 26, 1981]

§ 401.427 Charge on past due accounts.

A charge of two percent (2%) per month shall be paid on the opening monthly balance on accounts remaining unpaid over thirty (30) days after the billing date.

[CGD 79-138, 45 FR 13078, Feb. 28, 1980]

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $232 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

[CGD 86-020, 52 FR 11471, Apr. 9, 1987]

§ 401.430 Prohibited charges.

No rate or charge shall be applied against any vessel, owner or master thereof, by a registered pilot which differs from the rates and charges set forth in this part, nor shall any rates or charges be made for services performed by a registered pilot, or for support services directly related to the provision of pilotage that a registered pilot requires a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

[CGD 88-111, 55 FR 17581, Apr. 25, 1990]

§ 401.431 Disputed charges.

(a) Any rate or charge applied against any vessel, owner, or master thereof by a registered pilot which the owner or master disputes as a charge prohibited by § 401.430, may be appealed to the Director for an advisory opinion as to whether such rate or charge is a prohibited charge.

(b) The appeal shall be in writing and set forth the amounts and description of the rates and charges disputed. The appeal must be supported by evidence that a reasonable attempt has been made to resolve the matter between the parties and that a bona fide controversy exists.

(c) The respondent shall be furnished a copy of the appeal and be notified by the appellant that the matter has been appealed for an advisory opinion.

(d) The respondent shall be allowed a reasonable time, not less than twenty (20) days, in which to file with the Director and the appellant any data or arguments desired to be submitted in further defense of the disputed rates and charges. I11(e) The Administration shall consider all relevant matter presented and issue an advisory opinion which shall be accompanied by an express recital that all relevant material received has been considered. The advisory opinion shall set forth the rates and charges in dispute, a discussion of the facts and relevant material considered, and a statement of opinion.

(f) When it is found that the disputed rates and charges, in the opinion of the Director, are charges prohibited by § 401.430, the respondent shall have a reasonable time, but not more than thirty (30) days in which to refund moneys, adjust invoices, and otherwise conform to the advisory opinion.

(g) Failure or refusal to comply with the advisory opinion within the time allowed may form a basis for a determination that there is a violation of the Great Lakes Pilotage Regulations subject to the provisions of § 401.500.

[29 FR 10467, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967]

§ 401.432 Certification of support services.

Each association holding a Certificate of Authorization shall certify each year whether any support service entity is directly or indirectly related by beneficial ownership to that association or to a United States registered pilot who is also a member of that association.

[CGD 88-111, 55 FR 17581, Apr. 25, 1990]

§ 401.440 Advance payment of charges.

Subject to the approval of the Director, a United States or Canadian Registered Pilot performing pilotage services in accordance with the rates and charges set forth in this subpart may require advance payment of such rates or charges or a suitable bond securing payment.

[29 FR 10467, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967]

§ 401.450 Pilot change points.

A Registered Pilot's assignment is completed when the vessel to which he is assigned completes its arrival at or, in the case of a through trip, passes any of the following places:

(a) Snell Lock;

(b) Cape Vincent;

(c) Port Weller;

(d) Lock No. 7, Welland Canal;

(e) Detroit/Windsor, other than assignments originating or terminating at a point on the Detroit River;

(f) Port Huron/Sarnia;

(g) Detour;

(h) Gros Cap;

(i) Chicago with respect to assignments originating at Detour or Port Huron/Sarnia; and

(j) Duluth/Superior and Fort William/Port Arthur with respect to assignments originating at Gros Cap.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968]

§ 401.451 Pilot rest periods.

(a) Except as provided in paragraph (b) of this section:

(1) Each Registered Pilot upon completing an assignment at a change point designated in § 401.450, and

(2) Each Registered Pilot upon completing a series of assignments totaling more than 10 hours with no more than 2 hours rest between assignments, shall not perform pilotage services for at least 10 hours.

(b) In the event of an emergency or other compelling circumstances a pilotage pool may assign a Registered Pilot for service before his 10-hour rest period required under paragraph (a) of this section is completed. Pilotage pools shall advise the Director of each assignment made under this paragraph.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968]

Subpart E—Penalties; Operations Without Registered Pilots

§ 401.500 Penalties for violations.

Any person, including a pilot, master, owner, or agent, who violates any provision of this part shall be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

[CGD 88-111, 55 FR Apr. 25, 1990]

§ 401.510 Operation without Registered Pilots.

(a) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the vessel or its cargo is in distress or jeopardy.

(b) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the Director, with the concurrence of the Commander, 9th Coast Guard District, notifies the master that a United States or Canadian Registered Pilot is not available.

(1) Notification to the master that a pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances admit, and shall not be deemed given until the notice is actually received by the vessel.

(2) The determination that a pilot is not available will be made on an individual basis and only when a vessel has given proper notice of its pilotage service requirements to the pilotage pool having dispatching jurisdiction at the time. The vessel has no obligation or responsibility with respect to such notification other than properly informing the pilotage pool of its pilotage requirements. However, the failure or delay by the pool in processing a pilotage service request, or refusal or delay by the Coast Guard in notifying the vessel that a pilot is not available, does not constitute constructive notice that a pilot is not available, and the vessel is not relieved by such failure or delay from compliance with the Great Lakes Pilotage Act of 1960.

(3) Upon receipt of proper notice of a vessel's pilotage requirements, the pilotage pool shall then determine from the tour de role the availability of a pilot to render the service required. If no pilot is reasonably expected to be available for service within 6 hours of the time the pilotage services are required by the vessel, the pilotage pool shall promptly inform the Director through the U.S. Coast Guard communications system in the manner as may be prescribed from time to time by the Commandant. The Director shall be informed of:

(i) Name and flag of the vessel;

(ii) Route of vessel for which a pilot is not available;

(iii) Time elapsing before a pilot is reasonably expected to become available;

(iv) Whether vessel has an "other officer" on board;

(v) Familiarity of master with route to be transited by the vessel;

(vi) Draft of vessel; and

(vii) Any circumstances of traffic or weather, or condition of the vessel or its cargo which would adversely affect the safety of the vessel in transiting without a pilot.

(4) When a pilot is expected to become available within 6 hours of the time pilot services are required, the vessel shall be informed that a pilot is available and the approximate time the pilot will report on duty. However, should any unusual circumstance or condition exist which may justify notification that a pilot is not available in less than 6 hours, the pilotage pool shall inform the Director as in paragraph (b)(3) of this section, along with the circumstances involved. Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section if a notice of pilot availability is not received from the appropriate pilotage pool within two hours of providing its pilotage requirements to the pool.

(5) Any vessel which requires the services of a pilot and is navigated without a pilot or proceeds prior to receipt of a message that a pilot is not available pursuant to paragraph (b)(1) of this section shall be reported as in

violation of section 7 of the Great Lakes Pilotage Act of 1960 by the pilotage pool to the local Coast Guard unit having jurisdiction. If the message is received after the vessel proceeds, such message shall not be delivered without concurrence of the Coast Guard officer to whom the violation was reported.

(6) U.S. pilotage pools informing the Director that a pilot is not available for a vessel shall also obtain notice that a pilot is not available from the appropriate Canadian Supervisor of Pilots for those portions of the route which are in Canadian waters in the manner prescribed by them. The notice for Canadian District No. 1 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Cornwall, Ontario, and the notice for Canadian District No. 2 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Port Weller, Ontario. Authority to issue notice for Canadian waters of District No. 3 has been granted to the Director by the Department of Transport, Ottawa, and separate notice from Canada for this District is not required until such time as separate Canadian pilotage dispatch facilities may be established.

(7) Notice that a pilot is not available shall not be delivered to any vessel unless the message contains the concurrence of the Commander, 9th Coast Guard District, and notice for Canadian waters of Districts No. 1 and No. 2, if required, has been obtained from the appropriate Canadian authority.

(8) In the event of an emergency or any other compelling circumstance, the Director may issue, without the specific request for service as provided under paragraph (b)(2) of this section, individual or general notification that a pilot or pilots are not available. Pilotage pools shall advise the Director of any condition or circumstance coming to their attention which may warrant such a determination.

[32 FR 14221, Oct. 13, 1967, as amended by CGD 88-111, 55 FR 17582, Apr. 25, 1990; 55 FR 19145, May 8, 1990]

Subpart F—Procedure Governing Revocation or Suspension of Registration and Refusal to Renew Registration

EDITORIAL NOTE: For nomenclature changes to Part 401, Subpart F, see CGD 76-189, 42 FR 31160, June 20, 1977.

§ 401.600 Right to hearing.

(a) A United States Registered Pilot, on receipt of notice from the U.S. Coast Guard that he has violated any regulation made pursuant to the Act, which violation the Director determines is grounds for suspension or revocation of the pilot's Certificate of Registration, shall have fifteen (15) days from the receipt of such notice in which to notify the Director that he elects to exercise his right to a hearing as to the grounds for the proposed suspension or revocation. A pilot failing to notify the Director within the prescribed period is deemed to have waived his right to a hearing.

(b) A United States Registered Pilot whose application was timely filed, on receipt of notice that renewal of his Certificate of Registration has been denied pursuant to § 401.240(c), who fails to notify the Director within fifteen (15) days of the receipt of such notice that he desires a hearing, is deemed to have waived his right to a hearing.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967]

§ 401.605 Notice.

(a) The Director, upon receipt of notice that a U.S. Registered Pilot elects to exercise his rights to a hearing, shall arrange for a hearing and notify the pilot of the time, date and place it is to be held.

[32 FR 14222, Oct. 13, 1967]

§ 401.610 Hearing.

(a) The hearing shall be held at the time and place designated with due regard to the convenience and necessity of the parties.

(b) The hearing shall be held on the record before an Administrative Law Judge appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). Hearings shall be conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act, as amended (5 U.S.C. 554, 556, 557).

[32 FR 14222, Oct. 13, 1967]

§ 401.615 Representation.

(a) The U.S. Registered Pilot, designated "respondent" in a suspension or revocation hearing or "applicant" in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia, upon filing with the Administrative Law Judge a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, the Commandant, or other official of the Coast Guard, his personal appearance or signature shall constitute a representation that under the provisions of this subpart and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts.

(c) When any Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a U.S. Registered Pilot shall be given to or by such attorney. If a U.S. Registered Pilot is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

[32 FR 14222, Oct. 13, 1967]

§ 401.620 Burden of proof.

(a) In a suspension or revocation hearing, the Director shall have the burden of establishing, by substantial evidence, the grounds for a suspension or revocation of a Certificate of Registration held by a pilot, as stated in the letter addressed to such pilot notifying him of the Coast Guard's intention to suspend or revoke the pilot's registration.

(b) In a refusal-to-renew-registration hearing, the Director shall have the burden of establishing the grounds for the Director's determination under § 401.240(c) to deny renewal of the Certificate of Registration.

[32 FR 14222, Oct. 13, 1967]

§ 401.630 Appearance, testimony, and cross-examination.

(a) The U.S. Registered Pilot may appear in person or by counsel and may testify at the hearing, call witnesses in his own behalf, and cross-examine witnesses appearing in behalf of the Director.

(1) In any case in which the U.S. Registered Pilot, after being duly served with the notice of the time and place of the hearing, fails to appear at the time and place specified for the hearing, a notation to that effect shall be made in the record and the hearing may then be conducted "in absentia."

(2) The Administrative Law Judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of hearing and the allegations against the U.S. Registered Pilot.

(b) The Director through counsel shall appear, present evidence, call witnesses, and cross-examine the witnesses called on behalf of the U.S. Registered Pilot.

(c) In the discretion of the Administrative Law Judge, other witnesses may testify at the hearing.

[32 FR 14222, Oct. 13, 1967]

§ 401.635 Evidence which shall be excluded.

The Administrative Law Judge presiding at the hearing shall exclude irrelevant, immaterial, or unduly repetitious evidence.

[29 FR 11595, Aug. 13, 1964]

§ 401.640 Record for decision.

The transcript of testimony and oral argument at the hearing, together with any exhibits received, shall be made part of the record for decision, and the record shall be available to the respondent or applicant on payment of costs thereof.

[29 FR 11595, Aug. 13, 1964]

§ 401.645 Administrative Law Judge's decision; exceptions thereto.

At the conclusion of the hearing, the parties may submit briefs and recommended conclusions and findings within such time as the Administrative Law Judge shall determine appropriate. The Administrative Law Judge shall thereafter issue a written initial decision in the case, which decision shall be final and binding upon the Director, except as provided in § 401.650.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967]

§ 401.650 Review of Administrative Law Judge's initial decision.

(a) The Commandant may, on his own motion, or on the basis of a petition filed by the U.S. Registered Pilot in the proceedings or the Director, review any initial decision of the Administrative Law Judge by entering a written order stating that he elects to review the action of the Administrative Law Judge. Copies of all orders for review, replies, and decisions shall be served on all parties.

(b) A petition for review shall be in writing and shall state the grounds upon which the petition relies. A petition for review shall be limited to the record before the Administrative Law Judge. Five (5) copies of such a petition for review, together with proof of service on all parties, shall be filed with the Commandant (CL) within fifteen (15) days after the date of service of the initial decision of the Administrative Law Judge. Parties may file replies, in writing, to a petition for review, with proof of service on other parties in the same manner and number of copies as is provided for filing of a petition for review and within ten (10) days after the date the petition for review is timely filed. A reply shall be limited to the record before the Administrative Law Judge and the petition for review.

(c) If a petition for review is filed within the time prescribed, the initial decision of the Administrative Law Judge shall be final fifteen (15) days after expiration of the time prescribed for filing a reply thereto unless the Commandant prior to expiration of the fifteen (15) days after expiration of the time prescribed for filing a reply thereto enters a written order granting the petition for review. If no petition for review is filed within the time prescribed and the Commandant does not elect to review on his own motion, the initial decision of the Administrative Law Judge shall be final twenty (20) days after the date of service of the decision.

(d) If the Commandant reviews the initial decision as provided in this section, he shall issue a written order affirming, amending, overruling, or remanding the initial decision of the Administrative Law Judge within thirty (30) days after the date on which he takes review. There is no other administrative remedy within the Department of Transportation.

(e) When the Commandant has sustained an order of suspension or revocation of a registration, the respondent may appeal to the National Transportation Safety Board under 49 CFR 825.5 within ten (10) days after service of the Commandant's decision.

[32 FR 14222, Oct. 13, 1967, as amended by CGD 76-189, 42 FR 31160, June 20, 1977]

Subpart G—Operating Requirements for U.S. Registered Pilots and Holders of Certificates of Authorization; Authority of the Director Over Operations

§ 401.700 Operating requirements for U.S. registered pilots.

Each U.S. registered pilot shall—

(a) Provide pilotage service when dispatched by his pool; and

(b) Comply with the dispatching orders of the Director under § 401.720 (b).

[CGD 74-233, 40 FR 41527, Sept. 8, 1975]

§ 401.710 Operating requirements for holders of Certificates of Authorization.

Each holder of a Certificate of Authorization shall—

(a) Comply with the terms of any agreement for services by registered pilots on the Great Lakes between an appropriate agency of Canada and the

Secretary, his designated agent, or the Director;

(b) Coordinate on a reciprocal basis its pool operations with pool operations of the Canadian Government, under the "Memorandum of Arrangements, Great Lakes Pilotage, Between the Secretary of Transportation of the United States of America and the Minister of Transport of Canada", effective July 7, 1970, as amended;

(c) Provide continuous arrangements and facilities for the efficient dispatching of pilotage service on a first-come, first-serve basis to vessels that give notice of pilotage service requirements to the pilotage dispatch station, except pilots are not required to board a vessel that does not furnish safe boarding facilities;

(d) Dispatch pilotage service under the terms of its approved working rules as referenced in § 402.320;

(e) Comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b);

(f) Comply with all accounting procedures and the reporting requirements in this chapter; and

(g) Make available to the Commandant all of its financial and operating records.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975]

§ 401.720 Authority of the Director over operations.

(a) This section does not limit the authority of the Director under any other section in this chapter.

(b) When pilotage service is not provided by the association authorized under 46 U.S.C. 216b(e) because of a physical or economic inability to do so, or when the Certificate of Authorization is under suspension or revocation under § 401.335, the Director may order any U.S. registered pilot to provide pilotage service.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975, as amended by CGD 75-228, 40 FR 57673, Dec. 11, 1975]

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

Subpart A—General

Sec.
402.100 Purpose.

Subpart B—Registration of Pilots

402.210 Requirements and qualifications for registration.
402.220 Registration of pilots.

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

402.320 Working rules.

AUTHORITY: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

Subpart A—General

§ 402.100 Purpose.

The purpose of this part is to implement those provisions of the Great Lakes Pilotage Regulations (Part 401 of this chapter) which authorize or require the Commandant to issue supplementary rules and orders.

[27 FR 11947, Dec. 4, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

Subpart B—Registration of Pilots

§ 402.210 Requirements and qualifications for registration.

(a) Pursuant to § 401.210(a)(4), each applicant for an original registration at the time of application and each Registered Pilot annually is required to pass a physical examination given by a licensed medical doctor and reported on the form furnished by the Director. The examination report shall describe the applicant's or Registered Pilot's visual acuity, color sense, physical condition, and competency or perform the duties of a U.S. Registered Pilot.

(b) Any disease, physical or mental defect, or impairment to hearing or visual acuity, such as epilepsy, insanity, senility, acute venereal disease, neurosyphilis, hemiplegia, paralysis or missing arm, leg, or eye, muteness or pronounced speech impairment, acute kidney or gastro-enteritis disease, extreme obesity, addiction of alcohol or narcotics, acute varicosity of the legs, cardiovascular disease or other disorder which would impair the applicant's ability to be available for service when required and to withstand the rigors of boarding vessels, climbing ladders or great heights, standing for long periods of time, and performing his duties under prolonged periods of nervous strain are causes for determination of physical incompetency.

(c) An applicant for original registration must have a visual acuity either with or without glasses of at least 20/20 vision in one eye and at least 20/40 in the other. An applicant who wears glasses or contact lenses must also pass a test without glasses or lens of at least 20/40 in one eye and at least 20/70 in the other. Registered Pilots, however, must have either with or without glasses or lens visual acuity of at least 20/30 in one eye and at least 20/50 in the other. A Registered Pilot who wears glasses or lens must also pass a test without glasses or lens of at least 20/50 in one eye and at least 20/100 in the other. The color sense of original applicants and Registered Pilots shall be tested by a pseudoisochromatic plate test. Passage of the Williams lantern test or its equivalent is an acceptable substitute for a pseudoisochromatic plate test.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968]

§ 402.220 Registration of pilots.

(a) Each applicant pilot must complete the number of round trips specified in this section prior to registration as a U.S. registered pilot. The round trips must be made in company with a registered pilot, on oceangoing vessels of 4,000 gross tons or over, and must be within one year of the date of application.

(1) If the applicant pilot holds a master's license, a minimum of five round trips are required over the waters for which registration is desired.

(2) If the applicant pilot holds a chief mate's license or a second mate's license, or, holds a first class pilot's license with service in the capacity of first mate or second mate, a minimum of eight round trips are required over the waters for which registration is desired.

(3) If the applicant pilot holds a first class pilot's license or a third mate's license, a minimum of twelve round trips are required over the waters for which registration is desired.

(b) No course of instruction prescribed by a pilot association shall be approved unless it includes the following minimum criteria:

(1) Instruction in the maneuvering characteristics of various types of vessels and propulsion machinery including the characteristics of direct-drive motor, geared-drive motor, turbo-electric, steam turbine and steam reciprocating drives. Study of maneuvering characteristics to include turning radius, times and distances to stop, time to back, etc.

(2) Instruction in the effects of oceangoing vessels in restricted waters.

(3) Instruction in the use of tugs, docking procedures in locks and piers, and transiting bridges.

(4) Instruction in search and rescue and civil defense procedures as issued by the U.S. Coast Guard, Federal, State, and local port authorities.

(5) Instruction in basic helm and engine telegraph orders in the Greek, Spanish, German, and Italian languages.

(6) Instruction in communication, security, and signal procedures applicable to U.S. registered and foreign vessels on the Great Lakes as prescribed by the U.S. Coast Guard, St. Lawrence Seaway Development Corporation, U.S. Corps of Army Engineers, and port authorities.

(7) Instruction in Customs, Immigration, Quarantine, Department of Agriculture, and Coast Guard regulations applicable to U.S. registered and foreign vessels on the Great Lakes.

(8) Instruction in the Great Lakes Pilotage Act of 1960; Great Lakes Pilotage Regulations; Presidential Proclamation of December 22, 1960; and Memorandum of Arrangements, Great Lakes Pilotage, between the Secretary of Commerce of the United States and the Minister of Transport, Canada, of May 1, 1961.

(9) Instruction in miscellaneous subjects including man-overboard recovery (i.e. Williamson turn); collision,

fire, and explosion procedures; and maneuvering in ice.

(10) Instruction in radar plotting and use of foreign made navigational equipment.

(Secs. 4 and 5, 74 Stat. 260 (46 U.S.C. 216b, 216c), as amended by Pub. L. 95-455; sec. 6(a)(4), 80 Stat. 937, as amended (49 U.S.C. 1655(a)(4)); 49 CFR 1.46(a)))

[27 FR 11947, Dec. 4, 1962, as amended at 28 FR 4758, May 11, 1963; 31 9067, FR July 1, 1966; CGD 78-144b, 44 FR 64838, Nov. 8, 1979]

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

§ 402.320 Working rules.

(a) Section 401.320(d) (2) and (6) of this chapter require that voluntary associations of U.S. Registered Pilots authorized to establish pilotage pools agree to submit Working Rules for approval of the Director and that they will coordinate their pool operations with Canada on a reciprocal basis. The following approved Working Rules are on file in the office of the Director and are available for public inspection by any person properly and directly concerned:

(1) The Working Rules and Dispatching Procedures for District No. 1, amended and adopted by the St. Lawrence Seaway Pilots Association, Inc., Cape Vincent, N.Y., dated February 1, 1965, amended to April 25, 1972.

(2) The joint (interpool) working rules for United States and Canadian Districts No. 1 and No. 2 adopted by the St. Lawrence Seaway Pilots Association, Cape Vincent, N.Y.; Lakes Pilots Association, Inc., Port Huron, Mich.; and the Supervising Pilot, Department of Transport, Port Weller, Ontario, Canada, approved as of October 14, 1970.

(3) The Working Rules for District No. 2, amended and adopted by the Lakes Pilots Association, Inc., Port Huron, Mich., approved as of May 15, 1967.

[28 FR 12852, Dec. 4, 1963, as amended at 30 FR 5512, Apr. 17, 1965; 30 FR 12680, Oct. 5, 1965; CGFR 67-39, 32 FR 8590, June 15, 1967; 32 FR 14223, Oct. 23, 1967; CGD 74-233, 40 FR 41527, Sept. 8, 1975]

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

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Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

Source: 27 FR 8617, Aug. 29, 1962, unless otherwise noted.

General Accounting Provisions

1. INTRODUCTION TO SYSTEM OF ACCOUNTS AND REPORTS

1. *Applicability of System of Accounts and Reports.* Each voluntary association holding a Certificate of Authorization shall keep its books of account, records and memoranda and make reports to the Director in accordance with the system of accounts and reports prescribed herein. The Commandant reserves the right, however, to expand or otherwise modify this system of accounts and reports.

2. *Waivers from this System of Accounts and Reports.* A waiver from any provision of this system of accounts or reports may be made by the Director upon his own initiative or upon the submission of written request therefor from any Association holding a Certificate of Authorization, provided that such a waiver is in the public interest and each request for waiver expressly demonstrates that: existing peculiarities or unusual circumstances warrant a departure from a procedure or technique prescribed herein; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts and reports; and the application of such alternative procedure will maintain or improve uniformity in substantive results as between Associations.

3. *General description of System of Accounts and Reports.* (a) This system of accounts and reports is designed to permit limited contraction or expansion to reflect the varying needs and capabilities of different Associations without impairing basic accounting comparability as between Associations.

(b) Under the system of accounts prescribed, both balance sheet and profit and loss accounts and account groupings are designed, in general, to embrace all activities, both pool and nonpool, in which the Association engages. Except for transactions which are of sufficient magnitude to distort current year operating results, prior year transactions are recorded in the same accounts as current year transactions of a like nature.

(c) In order to afford Associations as much flexibility and freedom as possible in establishing ledger and subsidiary accounts to meet their individual needs, a minimum number of account subdivisions have been prescribed in this Uniform System of Accounts. It is intended, however, that each Association, in maintaining its accounting records will provide subaccount and subsidiary account segregations which are consistent with the prescribed accounts.

4. *System of Accounts coding.* (a) A four digit control number is assigned for each balance sheet and profit and loss account. Each account is numbered sequentially, within blocks, designating basic balance sheet and profit and loss classifications.

5. *Records.* (a) The general books of account and all books, records, and memoranda which support in any way the entries therein shall be kept in such manner as to provide at any time full information relating to any ac-

count. The entries in each account shall be supported by such detailed information as will render certain the identification of all facts essential to a verification of the nature and character of each entry and its proper classification under the prescribed Uniform System of Accounts.

(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records such as organization tables and charts, internal accounting manuals and revisions thereto, minute books, stock books, reports, cost distributions and other accounting work sheets, correspondence, memoranda, etc., which may constitute necessary links in developing the history of, or facts regarding, any accounting or financial transaction.

(c) All books, records and memoranda shall be preserved and filed in such manner as to readily permit the audit and examination thereof by representatives of the U.S. Coast Guard. All books, records and memoranda shall be housed or stored in such manner as to afford protection from loss, theft, or damage by fire, flood or otherwise, and such books and records shall be retained for 10 years unless otherwise authorized by the Commandant.

6. *Accounting entities.* Each Association holding a Certificate of Authorization shall be a separate accounting entity. However, the records shall be maintained with sufficient particularity to permit the association of items with each pool operation and to permit the equitable proration of items which are common to two or more pools and for nonpool operations of the Association.

7. *Interpretation of accounts.* To the end that uniform accounting may be maintained within the prescribed system, questions involving matters of significance which are not clearly provided for should be submitted to the Director for explanation, interpretation, or resolution.

8. *Address for reports and correspondence.* Reports, statements, and correspondence submitted in accordance with or relating to instructions and requirements contained in this part shall be addressed to the Commander, 9th Coast Guard District (dgp), Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

2. GENERAL ACCOUNTING POLICIES

1. *Bases of allocation between pool and nonpool operations.* (a) In accordance with the provisions of section 1, item 6 profit and loss items and assets applicable in common to two or more pools and/or nonpool operations shall be allocated equitably to each pool and to nonpool operations.

(b) Changes in methods of allocating items between pools shall only be made as of the beginning of each fiscal year.

2. *Accounting period.* (a) The accounting year of each Association subject to this Uniform System of Accounts shall be the calendar year unless otherwise approved by the Director.

(b) Each Association shall keep its financial accounts and records on a full accrual basis so that all transactions, as nearly as may reasonably be ascertained, shall be fully reflected in the Association's books for the accounting period, matching revenues earned with the costs attaching thereto.

(c) Expenditures incurred during the current accounting year which demonstrably benefit operations to be performed during subsequent accounting years to a significant extent shall be deferred and amortized.

3. *Liability accruals.* Charges shall be made against income and accruals made for only those liabilities for which a definitely demonstrable obligation exists. Where a definite obligation has been incurred and the precise liability has not been determined, an estimate may be made of the currently existing liability on such actuarial or other bases as can be justified from available information, provided that balances are re-evaluated and adjusted at least once each accounting year.

4. *Federal income tax accruals.* (a) All income taxes shall be accrued by proportionate charges or credits to income each accounting period in such manner as will allocate the charges for taxes, or the tax credits for losses, to

the periods in which the related profits or losses respectively, are reflected.

(b) The general policy in respect to the accrual of income taxes for each accounting period will require that the Association take up in its accounts an amount equivalent to the actual tax liability applicable to the period as computed or estimated on the basis of income tax laws and regulations then in effect, except where Associations compute depreciation for tax purposes at rates in excess of those which are used for regular accounting purposes. In such cases the deferred income taxes shall be accrued for regular accounting purposes in order to apportion the total income tax cost among the various accounting periods on a basis which will fairly represent the actual tax burden in terms of actual income taken up by the Association in each of the various accounting periods.

5. *Delayed items.* (a) All items affecting net income, including income adjustments, shall be recorded in appropriate profit and loss accounts and reflected on the income statement and shall not be entered directly to retained earnings.

(b) Items applicable to operations occurring prior to the current accounting year which were not recorded in the books of account shall be included in the same accounts which would have been charged or credited if the items had not been delayed; provided, that if any delayed item is relatively so large in amount that its inclusion in the accounts for a single year would materially distort the affected accounts, it shall be included in profit and loss classification 5590 Special items.

6. *Unaudited items.* If a transaction has occurred but the amount involved is not precisely determinable, the amount shall be estimated, included in the proper accounts, and where significant noted for financial statement purposes. The Association is not required to anticipate or disclose minor items which would not appreciably affect the results of its operations or financial position.

7. *Improvements, additions and betterments.* (a) As a general rule, expenditures for additions, betterments or improvements, which increase the productive capacity of units of property or equipment, shall be capitalized rather than charged directly against income of the period in which incurred. Expenditures of insignificant amount may be expensed as incurred, rather than capitalized, provided their inclusion as individual items or when aggregated for like items, will not distort current operating results.

(b) The costs to be capitalized shall include all costs directly incurred by reason of the acquisition of the capital item, including transportation and installation costs.

8. *Accounting for transactions in gross amounts.* (a) All assets and liabilities shall be stated in balance sheet presentations in gross values, provided that all depreciation, provisions for uncollectible accounts, and other valuation reserves shall be offset against the class of asset to which related.

(b) The cost of Treasury Certificates or other tax notes, which are to be surrendered to the United States Treasury, rather than independently sold, in satisfying Federal income tax liabilities, may be offset against accrued Federal income tax liabilities provided both the gross income tax liability and the value of the tax notes are reflected on the face of the balance sheet. The offset of other government securities or other assets against Federal income tax liabilities is prohibited.

9. *Valuation of assets.* All assets shall be recorded at cost to the Association and shall not be adjusted to reflect changes in market value except that items which have been expensed from current inventories, and are recovered, may be returned to inventory at estimated value with contra credit to the expense accounts initially charged.

10. *Establishment of reserves.* (a) Provisions for reserves covering transactions or conditions which do not diminish assets or result in demonstrable liability to the Association, with corresponding diminution in stockholder equity during the period over which accrued, shall not be charged against income but shall be charged directly against balance sheet account

2940 Unappropriated retained earnings.

(b) All reserves shall be classified in balance sheet presentations in terms of their inherent impact upon the Association's financial condition as either valuation of assets (offsetting the assets to which related), accrued liabilities, or appropriations of retained earnings.

11. *Depreciation and amortization.* (a) Assets of a type possessing prolonged service lives significantly longer than one year, and which are generally repaired and reused shall be written off against operations through periodic depreciation or amortization charges from the date first placed in regular service. Assets of a type which are recurrently expended and replaced, rather than repaired and reused, shall not be depreciated or amortized but shall be charged to expense as issued for use.

(b) Assets of a type which are subject to depreciation shall not be classified as current assets but shall be carried in property and equipment or other appropriate noncurrent asset account classifications. Assets of a type which are recurrently expended and replaced shall be classified as current assets.

(c) Depreciation shall be calculated in such manner as will prevent the charging of either excessive or inadequate expense or the accumulation of excessive or inadequate reserves.

12. *Contingent assets and contingent liabilities.* Contingent assets and contingent liabilities shall not be included in the body of the balance sheet but shall be explained in footnotes.

13. *Notes to financial statements.* All matters which are not clearly identified in the body of the financial statements but which may influence materially interpretations or conclusions which may reasonably be drawn in regard to financial condition or earnings position shall be clearly and completely stated as footnotes to the financial statements.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

Balance Sheet Classifications

3. CHART OF BALANCE SHEET ACCOUNTS

CURRENT ASSETS

Account No.	*Title*
1010	Cash.
1030	Special deposits.
1110	United States Government securities.
1120	Other temporary cash investments.
1240	Accounts receivable—Pilotage.
1250	Notes and accounts receivable—Other associations.
1260	Notes and accounts receivable—Association personnel.
1280	Notes and accounts receivable—Other.
1290	Reserve for uncollectible accounts.
1310	Expendable spares.
1330	Materials and supplies.
1410	Short-term prepayments.
1420	Other current assets.
	INVESTMENTS AND SPECIAL FUNDS
1510	Advances to other Associations.
1530	Other investments and receivables.
1550	Special funds.
	PROPERTY AND EQUIPMENT
1601	Land.
1602	Buildings and structures.
1603	Other improvements and facilities.
1604	Vessels and floating equipment.
1605	Improvements to leased property.
1606	Other equipment.
1612	Reserve for depreciation—Building and structures.
1613	Reserve for depreciation—Other improvements and facilities.
1614	Reserve for depreciation—Vessels and floating equipment.
1615	Reserve for depreciation—Leasehold improvements.
1616	Reserve for depreciation—Other equipment.
1689	Construction work in progress.
	DEFERRED CHARGES
1820	Long-term prepayments.
1840	Unamortized discount and expense on debt.
1850	Unamortized membership fee expense.
1880	Other intangibles.
1890	Other deferred charges.
	CURRENT LIABILITIES
2010	Current notes payable.
2020	Accounts payable—General.
2040	Collections as agent.
2050	Notes and accounts payable—Other Associations.
2110	Accrued personnel compensation.
2120	Accrued vacation liability.

2131 Accrued Federal income taxes.
2139 Other accrued taxes.
2140 Dividends declared.
2190 Other current liabilities.

NONCURRENT LIABILITIES

2210 Long-term debt.
2240 Advances from other Associations.
2250 Pension liability.
2290 Other noncurrent liabilities.

DEFERRED CREDITS

2330 Unamortized premium on debt.
2340 Deferred Federal income taxes.
2390 Other deferred credits.

STOCKHOLDER EQUITY

2820 Preferred stock.
2840 Common stock.
2860 Capital stock subscribed and unissued.
2890 Other paid-in capital.
2930 Appropriations of retained earnings.
2940 Unappropriated retained earnings.
2990 Treasury stock.

4. GENERAL

1. The balance sheet accounts are designed to show the financial condition of the Association as at a given date, reflecting the asset and liability balances carried forward subsequent to the closing or constructive closing of the Association's books of account.

2. The balance sheet accounts prescribed in this system of accounts for each Association are listed in section 3, Chart of balance sheet accounts.

5. BALANCE SHEET ACCOUNT GROUPINGS

1. *Current assets.* (a) Include in this classification all resources which may reasonably be expected to be realized in cash or sold or consumed within one year, such as unrestricted cash, those assets that are readily convertible into cash or are held for current use in operations, and current receivables and claims against others to the extent settlement is reasonably assured, except that securities of other classified in investment and special fund accounts at date of acquisition need not be reclassified until disposition thereof.

(b) Inventories of all materials, supplies, lubricating oils, motor fuels, and expendable spares shall be physically verified at least annually. Differences between the inventory account and the actual physical inventory due to shortage, overage, shrinkage, etc. shall be adjusted by charges or credits to the appropriate expense account.

(c) Items of general current asset characteristics which are not expected to be realized or consumed within one year may be included in this classification provided the noncurrent portion is not substantial in amount and classification as a current item will not impair the significance of working capital.

2. *Investments and special funds.* (a) Include in this classification long-term investments in securities of others exclusive of United States Government securities, securities which are not readily marketable, funds set aside for specific purposes or involving restrictions preventing current use, contract performance deposits and other securities receivable, or funds not available for current operations. Investments in United States Government securities shall be included in the current assets account group.

(b) Investments in securities of others shall be recorded at cost exclusive of amounts paid for accrued interest or dividends.

(c) Permanent impairment in the value of securities may be reflected through charges to profit and loss classification 5530, Capital Losses-Securities and Investments.

3. *Property and equipment.* (a) All investments of the Association in land and units of tangible property and equipment shall be included within this general classification.

(b) The property and equipment records will be maintained so as to identify property with each pool operation, with nonpool operations, and joint pool and/or nonpool operations. Property used by two or more pools and/or nonpool operations will be maintained to permit an equitable proration of depreciation, amortization, repair and maintenance cost.

(c) Operating and nonoperating property and equipment shall be accounted for separately in accordance with the following instructions:

(1) Investment in property and equipment shall be recorded at total cost including all expenditures applicable to acquisition, other costs of a preliminary nature, costs incident to placing in position and conditioning

for operation, and costs of additions, betterments, improvements and modifications.

(2) Upon disposal by sale, retirement, abandonment, dismantling, or otherwise, of equipment depreciated on a unit basis, the Association shall credit the account in which the property or equipment is carried with the cost thereof; charge the depreciation and maintenance reserves with the related reserve balance applicable to the property disposed of; and charge the cash proceeds of the sale or the value of salvaged material to the appropriate asset accounts. When the sales price or salvage value less the cost of dismantling differs from the cost of the property less accrued depreciation and maintenance reserves such difference shall be recorded in the appropriate capital gain or loss accounts.

(3) Upon disposal by sale, retirement, abandonment, dismantling, or otherwise of property or equipment depreciate on a group basis, the Association shall credit the account in which the property or equipment is carried, and charge the related depreciation reserve with the original cost thereof, less any salvage realized, regardless of the age of the item. No gain or loss is recognized on the retirement of individual items of property or equipment depreciated on a group basis.

(4) When property and equipment owned by the Association is applied as part payment of the purchase price of new property and equipment, the new property and equipment shall be recorded at its full purchase price provided an excessive allowance is not made for assets traded-in, in lieu of price adjustments or discounts on the purchase price of assets acquired. The difference between the depreciated cost of assets applied as payment and the amount allowed therefor shall be treated as retirement gain or loss.

(5) The Association shall maintain property and equipment records setting forth the description of all property and equipment recorded in balance sheet classification 1600 Property and Equipment. With respect to each unit or group of property or equipment, the record shall show the description, location, date of acquisition, the original cost, the cost of additions and betterments, the cost of parts retired, rates of depreciation, residual values not subject to depreciation, and the date of retirement or other disposition.

4. *Property and equipment depreciation and maintenance reserves.* (a) This balance sheet classification shall include the accumulation of all provisions for losses occurring in property and equipment from use and obsolescence. For example, it shall include reserves for depreciation established to record current lessening in service value due to wear and tear from use and the action of time and the elements which are not replaced by current repairs, as well as losses in capacity for use or service occasioned by obsolescence, supersession, discoveries, change in popular demand, or the requirement of public authority. Residual values and rates for accrual of depreciation and maintenance shall be calculated to prevent charging excessive or inadequate expense or the accumulation of inadequate or excessive reserves.

(b) Depreciation shall be calculated from the date on which a building, structure or unit of property is placed in service, and shall cease on the date such property is disposed of by sale, retirement, abandonment, or dismantling, or when the difference between the cost and residual value, shall have been charged to expense.

(c) Property not subject to depreciation shall include: (1) Land owned or held in perpetuity; (2) expenditures on uncompleted units of property and equipment during the process of construction or manufacture; and (3) items classified as current assets.

5. *Deferred charges.* (a) Include in this classification all debit balances in general clearing accounts including charges held in suspense pending receipt of information necessary for final disposition, prepayments chargeable against operations over a period of years, capitalized expenditures of an organizational or developmental character, property acquisition adjustments, and the cost of patents, copyrights and miscellaneous intangibles.

(b) Deferred charges having a definite time incidence shall be amortized over the periods to which they apply.

6. *Current liabilities.* Include in this classification all debts or obligations the liquidation or payment of which is reasonably expected to require the use, within one year, of existing resources of a type which are properly classifiable as current assets, or the creation of other current liabilities. Current liabilities shall include payables incurred in the acquisition of materials, collections received in advance of performance of services, debts accruing from expenses incurred from operations and other liabilities that are regularly and ordinarily subject to current liquidation.

7. *Noncurrent liabilities.* (a) This classification shall include all debts or obligations the liquidation or payment of which is not reasonably expected to require the use within one year of existing resources of a type which are properly classifiable as current assets, or the creation of current liabilities. Noncurrent liabilities shall include mortgages, bonds and debentures maturing more than one year from the date of the balance sheet and other obligations not payable within 12 months. It shall reflect the principal amount or par value of debt securities issued or other long-term debt assumed by the Association. Discount and expenses on long-term debt shall be recorded in the Deferred Charges balance sheet group. Premiums on long-term debt shall be recorded in the Deferred Credits balance sheet account group.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this classification.

(c) Gains or losses on liquidation of bonds, debentures, or other debt securities of the Association shall be entered in profit and loss classification 4245, Capital Gains—Association's bonds, mortgages, etc., or 5535, Capital Losses—Association's Bonds, Mortgages, etc. Gains and losses or adjustments to liabilities applicable to expenses incurred in operations shall be entered in the expense accounts initially charged.

8. *Deferred credits.* (a) Include in this classification all credit balances in general clearing accounts including credits held in suspense pending receipt of information necessary for final disposition and premiums on long-term debt securities of the Association.

(b) Deferred credits having a definite time incidence shall be amortized over the periods to which they apply.

9. *Association equity.* (a) This general classification shall include all items which record the aggregate interest of Association members in assets owned by the Association.

(b) The general classification "Association Equity" shall be subdivided between that portion representing direct contributions of the members (Paid-In Capital) and that portion representing income retained from operations of the Association (Retained Earnings).

(c) The "Paid-In Capital" classification shall be subdivided between membership shares which shall include the par or stated value of shares issued or the cash value of the consideration actually received, in case of shares having no par or stated value, and "Other Paid-In Capital," which shall include the excess (premium) or deficiency (discount) of each value of the consideration received from the issue of any shares having par or stated value, donations by stockholders, adjustments of capital resulting from reorganization or recapitalization, and gains or losses from reacquisition and resale or retirement of the Association's shares.

(d) The "Retained Earnings" balance sheet classification shall reflect the balance of net profits, income, and gains of the Association from the date of formation. In cases where a deficit has been absorbed by a reduction of "Other Paid-In Capital" as a result of a restatement of shares or retained earnings, a new Retained Earnings account shall be established, dated to show that it runs from the effective date of the restatement. This date shall be disclosed in financial statements until such time as the effective date no longer possesses special significance.

6. Description and Classification of Balance Sheet Accounts

Current Assets

1010 Cash.

Record here all funds which are available on demand and are not formally restricted or otherwise reserved, which are held:

(1) In banks or banking institutions;

(2) As undeposited collections and cash in transit; and

(3) As imprest and petty cash funds. Funds deposited for special purposes which are to be satisfied within one year shall be included in account 1030 Special deposits and funds restricted as to general availability, which are not offset by current liabilities, shall be included in account 1550 Special funds—Other.

1030 Special deposits.

Record here funds or securities deposited with fiscal agents or others for payment of current obligations. Deposits for more than one year, not offset by current liabilities, shall not be included in this account but in Account 1550 Special funds—Other.

1110 United States Government securities.

Record here the cost of United States Treasury Certificates. This account shall be charged or credited for discount or premium to be amortized to profit and loss account 4210, Interest income.

1120 Other temporary cash investments.

Record here the cost of securities and other collectible obligations acquired for the purpose of temporarily investing cash, other than those issued by the United States Government. This account shall be charged or credited for discount or premium to be amortized to profit and loss account 4210 Interest income.

1240 Accounts receivable—Pilotage.

Record here all amounts billed for pilotage services.

1250 Notes and accounts receivable—Other associations.

Record here gross amounts due from other Associations, which are settled currently. Balances payable to other Associations shall not be offset against amounts carried in this account. Balances with Associations which are not normally settled currently shall not be included in this account but in balance sheet account 1510 Advances to other Associations.

1260 Notes and accounts receivable—Association personnel.

Record here amounts due from officers and employees of the Association including advances for expenses.

1280 Notes and accounts receivable—Other.

Record here notes receivable and accounts due from others, which are to be settled currently, not provided for in accounts 1240 and 1260, inclusive.

1290 Reserve for uncollectible accounts.

(a) Record here accruals for estimated losses from uncollectible accounts.

(b) All accounts against which reserves have been established shall be examined at least annually for the purpose of redetermining the basis of accruals to be applied to subsequent accounting periods and the reasonableness of reserves already provided.

1310 Expendable spares.

(a) Record here the cost of replacement parts of a type which ordinarily would be recurrently expended and replaced rather than repaired and reused.

(b) Spares held in small supply and purchased currently may be charged to appropriate expense accounts when purchased.

1330 Materials and supplies.

(a) Record here the cost of unissued and unapplied materials and supplies, including motor fuels and lubricating oils, held in stock such as expendable tools, stationery and office supplies, and pilotage service supplies.

1410 Short-term prepayments.

Record here prepayments of obligations which if not paid in advance would require the expenditure of working capital within one year, such as prepaid rent, insurance, taxes, interest, etc. Unexpired insurance and miscellaneous prepayments applicable to periods extending beyond one year where significant in amount shall be charged to balance sheet account 1820 Long-term prepayments.

1420 Other current assets.

Record here current assets not provided for in balance sheet accounts 1010 to 1410 inclusive.

INVESTMENTS AND SPECIAL FUNDS

1510 Advances to other Associations.

Record here advances, loans, and other amounts not settled currently with other Associations. Balances receivable from and payable to Associations shall not be offset.

1530 Other investments and receivables.

Record here notes and accounts receivable not due within one year and investments in securities issued by others. Securities held as temporary cash investments shall not be included in this account but in either balance sheet account 1110 United States Government securities or 1120 Other temporary cash investments as appropriate. Investments in and receivables from other Associations which are not settled currently shall be included in balance sheet account 1510 Advances to other Associations.

1550 Special funds.

Record here special funds not of a current nature and restricted as to general availability. Include items such as sinking funds, cash and securities posted with courts of law, employee's funds for purchase of membership shares, pension funds under the control of the Association, and equipment purchase funds.

PROPERTY AND EQUIPMENT

1601 Land.

Record here the total cost to the Association of all land owned by the Association. Cost of land includes appraisal fees, clearing costs, damage to property of others, drainage, grading, legal fees and expenses, removal and relocation of property belonging to others, as part of purchase contract, removal of structures purchased but not used, less credit for salvaged material. The account will be supported by subsidiary records showing for each parcel the date acquired, description, cost and disposition.

1602 Buildings and structures.

Record here the total cost to the Association of all buildings and structures owned by the Association. The cost includes the original cost and cost of any capital improvements incurred after acquisition by the Association. This account includes fixtures and equipment built into the structure or permanently affixed thereto, such as: plumbing, heating and lighting fixtures, elevators, air conditioning systems, vaults and partitions. However, the cost of all machinery, furniture and special-use items, which are not a part of the realty, should be included in the Equipment Account. The account will be supported by subsidiary records describing the individual buildings, location, cost and date acquired, depreciation rate, and cumulative depreciation to date.

1603 Other improvements and facilities.

Record here the total cost to the Association of all other improvements and facilities. Cost includes the purchase price, freight, and installation costs. Included in this account are structures and improvements to land, such as docks, piers, jetties, roads, culverts, sidewalks, parking areas and fences. The account will be supported by subsidiary records describing the improvements, location, cost, date improvements made, depreciation rates, and cumulative depreciation to date.

1604 Vessels and floating equipment.

Record here the total cost to the Association of all vessels, tugs, barges, scows, launches, etc., owned by the Association. Cost includes all necessary communication and navigational equipment, engines, transmissions, equipment, furniture and fixtures, and other appurtenances necessary to equip the vessels for service. The account will be supported by subsidiary records describing each vessel and piece of floating equipment, cost, date acquired, depreciation rate, and depreciation to date.

1605 Improvements to leased property.

Record here the total cost to the Association incurred in connection with modification, conversion or other improvements to leased property. The account will be subdivided as follows:

1605.2 Buildings and structures.
1605.3 Other improvements and facilities.
1605.4 Vessels and floating equipment.
1605.5 Other.

The accounts will be supported by subsidiary records describing such improvement, cost, date made, amortization rate, and cumulative amortization to date.

1606 Other equipment.

Record here the total cost to the Association of all other equipment owned by the Association. It includes the cost of all machinery, equipment, furniture and fixtures, automotive equipment and other nonexpendable property not otherwise classified. The account will be supported by subsidiary records describing each item by class or type, location, cost, date acquired, depreciation rate, cumulative depreciation, and method and date of disposal.

1612 Reserve for depreciation—Building and structures.

1613 Reserve for depreciation—Other improvements and facilities.

1614 Reserve for depreciation—Vessels and floating equipment.

1615 Reserve for depreciation—Leasehold improvements.

1616 Reserve for depreciation—Other equipment.

The separate accounts for depreciation set out above parallel balance sheet accounts 1602 through 1606. Record in these accounts the accruals for depreciation reserves as provided in section 5, item 4.

1689 Construction work in progress.

Record here the direct and indirect costs to the Association accumulated to the date of the balance sheet in connection with constructing and readying for installation property and equipment of all types and classes, as provided in section 5, item 3. The cost of completed construction shall be transferred to the appropriate asset account when it is completed and/or placed in operation.

DEFERRED CHARGES

1820 Long-term prepayments.

Record here prepayments of obligations applicable to periods extending beyond one year, such as payments on leased property and equipment and other payments and advances for rents, rights or other privileges.

1840 Unamortized discount and expense on debt.

(a) Record here the excess of the par value of debt securities issued over the cash value of consideration received therefor, exclusive of accrued interest, together with expenses related to the assumption by the Association of long-term debt of all types and classes.

(b) Amounts recorded in this account shall be amortized to profit and loss account 5510 Interest expense.

1850 Unamortized membership fee expense.

Record here all commissions and expenses incurred in the original issuance and sale of capital stock. The Association may amortize the balance in this account to profit and loss account 5570 Miscellaneous nonoperating expenses.

1880 Other intangibles.

Record here the cost of leaseholds, patents, copyrights and other intangible properties, rights and privileges and other intangible assets not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account. Amortization of each intangible asset recorded in this account shall be effected in accordance with generally accepted accounting principles.

1890 Other deferred charges.

Recorded here debits not provided for elsewhere, the proper final disposition of which cannot be effected until additional information has been received.

CURRENT LIABILITIES

2010 Current notes payable.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year, including the portion of long-term debt due within one year of the balance sheet date. The current portion of long-term debt expected to require the use of existing resources of a type not properly classifiable as current assets shall be included in appropriate noncurrent liability accounts and shall not be included in this account.

2020 Accounts payable—General.

Record here all accounts payable within one year which are not provided for in accounts 2010 to 2050, inclusive.

2040 Collections as agent.

Record here amounts collected for the account of others such as Federal, State, local taxes, and other amounts deducted from employee salaries and wages for payments to others.

2050 Notes and accounts payable—Other associations.

Record here gross amounts due on current notes and open accounts with other Associations which are settled currently. Balances receivable from other Associations shall not be offset against amounts carried in this account. Balances with other Associations which are not normally settled currently shall not be included in this account but in balance sheet account 2240 Advances from other Associations.

2110 Accrued personnel compensation.

Record here amounts accrued for unpaid compensation to personnel.

2120 Accrued vacation liability.

(a) Record here any accruals for liabilities against the Association for personnel vacations. At the option of the Association the cost of personnel vacations may be charged directly to the applicable personnel compensation expense account without accrual through this account.

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag provided such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts. No accruals shall be made to this account for other than definitely demonstrable obligations of the Association (see section 2, item 3 for applicable accounting policy).

2131 Accrued Federal income taxes.

Record here accruals for currently payable Federal income taxes. Provisions for deferred taxes shall be accrued as provided in balance sheet account 2340 Deferred Federal income taxes.

2139 Other accrued taxes.

Record here accruals for taxes, exclusive of Federal income taxes.

2140 Dividends declared.

Record here in separate subdivisions for each class and series of capital stock, all dividends declared but unpaid to Association members.

2190 Other current liabilities.

Record here current and accrued liabilities not provided for in accounts 2010 to 2140, inclusive.

NONCURRENT LIABILITIES

2210 Long-term debt.

Record here the face value or principal amount of debt securities issued or assumed by the Association which has not been retired or cancelled and is not payable within 12 months of the balance sheet date, except as provided in section 5, item 7.

2240 Advances from other Associations.

Record here net amounts due other Associations for notes, loans and advances which are not settled currently. Balances payable to and receivable from different Associations shall not be offset.

2250 Pension liability.

Record here the liability of the Association under employee pension plans, to which either or both employees and the Association contribute, if the plan is administered by the Association.

2290 Other noncurrent liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2250, inclusive.

DEFERRED CREDITS

2330 Unamortized premium on debt.

(a) Record here the excess of the cash value of consideration received over the par value plus accrued interest on debt securities issued.

(b) Amounts recorded in this account shall be amortized to profit and loss account 5510 Interest expense.

2340 Deferred Federal income taxes.

(a) Accruals of deferred Federal income tax liability shall be recorded in this account. (See section 2, item 4 for applicable accounting policy.)

(b) Accruals to this account shall be made by charges to profit and loss account 5550 Federal income taxes. Such accruals shall be based upon tax rates currently applicable to income of the periods in which the tax liability is determined.

(c) This account shall be debited and profit and loss account 5550 Federal income taxes shall be credited with proportionate amounts which will amortize prior accruals for deferred Federal income taxes over the periods in which depreciation expense normally used in computing net income exceeds depreciation or amortization of property recognized for tax purposes.

(d) Any applicable balance remaining in this account upon termination of the normal service life or retirement of property and equipment to which related shall be credited to profit and loss account 5550 Federal income taxes.

(e) Each Association is restricted in its use of this account to the purposes set forth above. Deferred tax accruals shall not be reversed or revised without prior approval of the Director. This prohibition, however, does not apply to the correction of clerical errors.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

2390 Other deferred credits.

Record here credits, not provided for elsewhere, the proper final disposition of which cannot be effected until additional information has been received.

STOCKHOLDER EQUITY

2820 Preferred stock.

Record here in separate subdivisions for each class and series, the par or stated value of preferred capital stock issued or in the case of no-par stock without stated value, the full consideration received.

2840 Common stock.

Record here in separate subdivisions for each class and series, the par or stated value of common stock issued or in case of no-par stock without stated value, the full consideration received.

2860 Capital stock subscribed and unissued.

Record here in separate subdivisions for each class and series, the par or stated value, or the subscription price in the case of stock without par or stated value, of legally enforceable subscriptions to the capital stock of the Association.

2890 Other paid-in capital.

Record here in separate subdivisions for each class and series, the difference between the price at which capital stock is sold and the par or stated value of such gains or losses arising from the reacquisition and the resale or retirement of each class and series of capital stock; donations; the excess of retained earnings capitalized over par or stated value of capital stock issued; and adjustments in capital resulting from reorganization or recapitalization. For unincorporated Associations this account shall include the capital contributions to the business enterprise by the members.

2930 Appropriations of retained earnings.

(a) Record here amounts of retained earnings segregated for contingencies and other special purposes.

(b) Charges resulting from the materialization of events for which retained earnings have been appropriated shall not be entered in this account but in appropriate profit and loss accounts. Balances in this account shall be returned to balance sheet account 2940 Unappropriated retained earnings when the reason for which created no longer exists.

2940 Unappropriated retained earnings.

(a) Record here the net income or loss from operations of the Association and dividends declared.

(b) Delayed credits or charges to income shall not be entered in this account directly but in appropriate profit and loss accounts.

(c) Net income or loss accounted for during the current fiscal year shall not be entered in this account until the close of the fiscal year. Unincorporated Associations may clear net income or loss accounted for during the year directly to balance sheet account 2890 Other paid-in capital, or optionally, to this account for subsequent transfer to balance sheet account 2890 Other paid-in capital.

2990 Treasury stock.

(a) Charge here the cost of capital stock issued by the Association reacquired by it and not retired or cancelled. Capital credits or debits resulting from the resale or retirement of capital stock held in this account shall be entered in balance sheet account 2890 Other paid-in capital.

(b) Separate records shall be established for each class and series of capital stock held in this account.

Profit and Loss Classifications

7. Chart of Profit and Loss Accounts

Account No.	*Account Title*
4100	Pilotage revenue.
4200	Nonoperating income and gains.
5100	Pilotage expense.
5200	Operations, maintenance etc.—Vessels and floating equipment.
5300	Maintenance etc., buildings, structures and equipment (other than office).
5400	Office and administrative and general expense.
5500	Nonoperating expense and losses.
5900	Profit and loss.

8. General

1. The profit and loss accounts are designed to reflect, through natural groupings, the elements entering into income or loss accruing to the proprietary interests during each accounting period.

2. The system of accounts prescribed herein provides for the coordinate grouping of all revenues and expenses in terms of both major objectives and functional activities.

3. The major accounts established for profit and loss elements are set forth in section 7, Chart of profit and loss accounts.

9. Description and Classification of Profit and Loss Accounts

4100 Pilotage revenue.

Record here all revenues derived from pilotage services performed. Revenues will be recorded on the basis of services performed.

4200 Non-operating income and gains.

Record here all capital gains and income of a financial nature. Separate subsidiary accounts will be maintained as follows:

4210	Interest income.
4220	Dividend income.
4230	Capital gains—Vessels and floating equipment, buildings, structures and equipment.
4240	Capital gains—Securities and investments.
4245	Capital gains—Association's bonds, mortgages, etc.
4250	Other.

5100 Pilotage expenses.

Record here all expenses incurred for the performance of pilotage services rendered by member pilots, apprentices, or contract pilots. These expenses include all wages paid pilots and apprentices, related fringe benefits and payroll taxes, expenses for meals, taxis and rooms whether reimbursed or furnished, etc. Separate subsidiary accounts will be maintained as follows:

5110 Pilots' salaries and wages.
5120 Apprentices' salaries and wages.
5130 Contract pilot fees.
5140 Subsistence and travel expenses.
5150 Payroll taxes and fringe benefits.
5160 Other.

5200 Operation, maintenance etc.—Vessels and floating equipment.

Record here all expenses incurred for rental, operation, maintenance, repair and depreciation of vessels and floating equipment. These expenses include wages and payroll taxes, fringe benefits, and subsistence expenses of crews and operators. Separate subsidiary accounts will be maintained as follows:

5210 Wages, payroll taxes and other fringe benefits.
5220 Subsistence and travel expense.
5230 Charter hire.
5240 Depreciation and amortization of leasehold improvements.
5250 Fuel and oil.
5260 Other materials and supplies.
5270 Repairs.
5280 Insurance.
5290 Other.

5300 Maintenance etc., buildings, structures and equipment (other than office).

Record here all expenses, including rent and depreciation, of maintaining and repairing all buildings, structures and equipment, except: (1) Vessels and floating equipment and (2) buildings, fixtures and equipment used for office and administrative purposes. Separate subsidiary accounts will be maintained as follows:

5310 Wages, payroll taxes and other fringe benefits.
5320 Rents and leases.
5330 Depreciation and amortization of leasehold improvements.
5340 Heat, light and power.
5350 Motor fuel and oil.
5360 Other materials and supplies.
5370 Repairs.
5380 Insurance.
5390 Other.

5400 Office and administrative and general expense.

Record here all expenses incurred for office and administrative and general direction of the Association, except expense of a financial nature. Separate subsidiary accounts will be maintained as follows:

5410 Officers salaries, payroll taxes and fringe benefits.
5415 Employees salaries and wages, payroll taxes, etc.
5420 Rents and leases.
5425 Depreciation and amortization of leasehold improvements.
5430 Heat, light and power (office buildings and equipment).
5440 Motor fuel and oil.
5445 Other materials and supplies.
5450 Repairs.
5460 Traveling expenses.
5465 Telephone, telegraph, teletype.
5470 Insurance and bond premiums.
5475 Postage and express.
5480 Property taxes.
5490 Other.

5500 Nonoperating expense and losses.

Record here all capital losses, Federal income tax, and expense of a financial nature. Subsidiary accounts 5580 and 5590 will be used only for material transactions whose inclusion in the other accounts would substantially distort current year operations. Except when material, prior year transactions will be recorded in the same account as current year transactions of like nature. Separate subsidiary accounts will be maintained as follows:

5510 Interest expense.
5520 Capital losses—Vessels and floating equipment, buildings, structures and equipment.
5530 Capital losses—Securities and investments.
5535 Capital losses — Association's bonds, mortgages, etc.
5540 Bad debt allowance.
5550 Federal income taxes.
5560 Dividends declared.
5570 Miscellaneous.
5580 Prior year adjustments (Net).
5590 Special items (Net).

5900 Profit and loss.

At the end of the accounting year, this account will be charged or credited, as the case may be, with the balances in all profit and loss accounts. The net balance in this account after the closing of the profit and loss accounts will be transferred to Account 2940 Unappropriated retained earnings or, optionally, in the case of unincorporated associations, to Account 2890 Other paid-in capital.

Inter-Association Settlements

10. GENERAL

1. Under the memorandum of arrangements between the United States and Canada it was agreed that settlement of accounts between United States pools and Canadian pools will be effected on an interim basis as of the end of each month with an annual settlement as of December 31 of each year. Payments on account will be made by the 15th of the following month on a net balance basis.

2. *Pro Forma Settlement Statement.*

(a) The following settlement statement will be made monthly by United States associations operating dispatching and accounting services:

Revenue

[Dollars]

		Current month	*Year—to date*
4100	Pilotage revenue:		
	United States pilots		
	Canadian pilots		
	Total		
	OPERATING EXPENSES		
5140	Subsistence and travel—pilots		
5415	Employees' salaries and benefits		
5420	Rental office space and equipment		
5430	Heat, light, and power		
5445	Office stationery and supplies		
5450	Repairs office equipment		
5460	Administrative travel		
5465	Telephone, telegraph, and teletype		
5470	Insurance and bonding		
5475	Postage and express		
5490	Bank service charges		
5495	Other		
5540	Bad debt allowance		
	Total		
	Net operating income		
	Less: Outstanding accounts receivable		
	Amount available for distribution		

[Dollars]

	U.S.	*Canada*	*Total*
Total pilotage revenue billed			
Respective share of amount available			

STATEMENT OF ACCOUNT AS AT————————(End of month)

[Dollars]

	U.S. share	*Canada share*	*Total share*
Share to date			
Boat and taxi charges paid			
Payments made to			
(End of month)			
Distribution this period			

STATEMENT OF ACCOUNT AS AT——————(End of month)—Continued

[Dollars]

	U.S. share	Canada share	Total share
Undistributed balance			

(b) The pilotage pool having the larger amount of cash available for distribution will make payment of such excess to the United States or Canadian counterpart pool on the basis of the currency of the nationality of the paying pilotage pool. The following statement will be submitted by the United States Associations making net balance payments.

Amount available for distribution— $———

Less applied credit ——*(amount)* @ ——*(rate)* ——

Remaining balance ——

United States Associations making net balance payment will make the following accounting entry:

Account No.	Description of account	Debit	Credit
2050	Accounts payable other associations.		
1250	Accounts receivable other associations.		
1010	Cash		

To record settlement of account with Canadian pool for month ended ——*(month)* ——*(day)* ——*(year)*.

United States Associations receiving net balance payment will make the following accounting entry:

Account No.	Description of account	Debit	Credit
1010	Cash		
2050	Accounts payable other associations.		
1250	Accounts receivable other associations.		

To record receipt of settlement from Canadian pool for month ended ——*(month)* ——*(day)* ——*(year)*.

3. *Pro Forma Journal Entries—Account 4100 Pilotage Revenue* will be supported by copies of invoices prepared by issuing offices.

Account 5140 Subsistence and Travel Expense will be supported by listings giving the pilot's name and amount. The travel expenses recorded in this account are only those provided for under paragraph 4(c) of the Canada-United States Memorandum of Arrangements and which are recoverable from operators of vessels.

Account 5415 Employees' Salaries and Wages, Payroll Taxes Etc. will be supported by list showing employees' name, title and salary. (Only employees directly engaged in dispatching and accounting activities are included.)

Account 5420 Rents and Leases will include agreed amount of rental for office space and necessary equipment.

Account 5430 Heat, Light, and Power will be supported by listing of utilities and amounts.

Account 5465 Telephone, Telegraph, and Teletype will be supported by listing of supplier and amounts.

Accounts 5445, 5450, 5460, 5470, 5475, 5490, 5495, and 5540 do not require supporting data.

The following entries will be made upon receipt of settlement statement:

[Dollars]

Account No.	Association's share	
	Debit	Credit
1250		
5140		
5230		
5415		
5420		
5430		
5445		
5450		
5460		
5465		
5475		
5490		
5495		
5540		
4100		

To record Association's share of revenue and expenses transferred from other Associations. (The debits and credits will be determined by multiplying the current month totals shown on the settlement statement by the Association's pro-rata share and then in turn multiplying the result by the exchange rate.)

[Dollars]

1010	
1250	

To record cash received (in United States currency).

Journal entries to record transactions from settlement statements prepared by United States Associations will be as follows:

[Dollars]

Account No.	Debit	Credit
4100		
2050		
5140		
5230		
5415		
5420		
5430		
5445		
5450		
5460		
5465		
5470		
5475		
5490		
5495		
5540		

To eliminate Canadian Pilot Pool's share of Revenue and Expense based on pro-rata share.

[Dollars]

2050	
1010	

To record payment to Canadian Pilots' Pool.

[28 FR 6644, June 27, 1963, as amended at 30 FR 12680, Oct. 5, 1965; 32 FR 14223, Oct. 13, 1967]

Financial Reporting

11. REPORTING REQUIREMENTS

1. Each Association holding a Certificate of Authorization shall file quarterly with the Director the following financial statements:

a. Balance Sheet

b. Profit and Loss Statement

2. The financial statements will list each active account, including subsidiary accounts, prescribed in the Uniform System of Accounts.

3. The financial statements will be prepared for the calendar quarters ending March 31, June 30, September 30, and December 31, unless otherwise authorized in writing by the Director.

4. Each Association will furnish Director with one copy of all settlement statements whether issued or received.

5. The financial statements, together with any other required statistical data, shall be submitted to the Director within 30 days unless otherwise approved by the Director.

6. Each association holding a Certificate of Authorization shall furnish the Coast Guard by April 1 of each year with an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967; CGD 88-111, 55 FR 17582, Apr. 25, 1990]

Bonds

12. FIDELITY BONDS

Each association holding a Certificate of Authorization is required to maintain a fidelity bond to indemnify against loss of money or other property through fraudulent or dishonest acts by employees.

The board of directors of each association shall annually fix the amount and character of fidelity bonds required of those persons handling or having custody of funds or other liquid assets.

The Director shall be advised of the amount and period of coverage.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

Budgets

13. OPERATING BUDGETS

Each association holding a Certificate of Authorization is required to prepare and submit to the Administrator, by the 31st day of January of each year, an estimated operating budget for the forthcoming operating season.

Estimates of revenue shall be itemized to reflect the principal sources of income, with pilotage income segregated from other classes of income.

Estimates of expenses shall be on a calendar year basis, with adequate explanation of any unusual or nonrecurring item.

Those items of expense includable in Inter-Association settlement statements as outlined in section 10 of the Uniform Accounting System Manual shall be segregated and supported by required detail.

Estimates submitted shall be approved by the Association's Board of Directors.

[27 FR 8617, Aug. 29, 1962, as amended at 32 FR 14223, Oct. 13, 1967]

Accounting Records

14. UNIFORM PILOT'S SOURCE FORM

The "Pilot's Source Form—Great Lakes Pilotage" is approved for use by pilots in Great Lakes Districts Nos. 1, 2, and 3. This form is to be issued to pilots by authorized United States pilotage pools and changes shall not be made in the format thereof unless authorized by the Director.

Pilots shall complete forms in detail as soon as possible after completion of assignment and return entire set to dispatching office, together with adequate support for reimbursable travel expense.

Upon receipt by the pilot association the forms shall be completed by insertion of rates and charges as specified in the Great Lakes Pilotage Regulations (46 CFR Part 401). The discount for Canadian pilots due to exchange differential shall be reflected as a separate item. The amount of discount shall be based on the United States dollar parity rate as may be established from time to time by the Minister of Finance of Canada.

Copies of the form shall be distributed as follows:

Original to accompany invoice;
First carbon to Director for statistical purposes;
Second carbon to billing office for accounting record;
Third carbon to pilot's own Association for pilot's personal record;
Fourth carbon to corresponding Canadian Association or agency for office use.

Associations shall account by number for all pilot source forms issued.

[28 FR 6645, June 27, 1963; 32 FR 14223, Oct. 13, 1967]

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.
404.01 General Ratemaking Provisions.
404.05 Guidelines.
404.10 Procedures.

AUTHORITY: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

SOURCE: CGD 88-111, 55 FR 17582, Apr. 25, 1990, unless otherwise noted.

§ 404.01 General ratemaking provisions.

The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines to be followed in arriving at the pilotage rates contained in part 401 of this chapter.

§ 404.05 Guidelines.

The following is a listing of the principal general guidelines to be followed in the ratemaking process:

(a) Each expense item shall be governed by a test of reasonableness in determining if a given cost is to be included in the rate base.

(b) Each expense item included in the rate base shall be uniform for all three pilot associations to the extent possible. For example, costs associated with pilot travel and training shall be measured against a common standard.

(c) No expense item may be justified on the basis of past years' expenditures, and each expense item shall be evaluated to determine if it is necessary, and if so, at what dollar amount.

(d) An expense item associated solely with the corporate structure of a pilot organization shall be examined to determine if it is necessary for the provision of pilotage services.

(e) Each expense item must be reasonable, and to the extent possible, measured against comparable or similar expenses in other industries, or by criteria used by the U.S. Internal Revenue Service.

(f) An expense item must be supported by adequate financial or other statistical data, and must be clearly shown to be a direct cost of providing pilotage services.

(g) If additional detailed analytic criteria are found to be necessary to determine the reasonableness of expenses, they may be utilized, and additional guidelines may also be developed and utilized.

§ 404.10 Procedures.

The following is a general description of the types of analyses performed and the general methodology followed in the development of most Great Lakes pilotage rate adjustments. This methodology may not always be followed because of agreements with Canada or for other reasons. Additional or other types of analyses may also be performed as circumstances admit. The general guidelines contained in § 404.05 are applied in the analyses identified here.

(a) Revenues earned by all authorized U.S. Great Lakes pilot associations are analyzed and projected for the selected future period.

(b) Expenses incurred by all authorized U.S. Great Lakes pilot associations as well as proposed or expected new items of expenses, are analyzed and projected for the selected future period. This analysis includes the application of various guidelines, including those in § 404.05.

(c) All projected expenses are segregated into the following categories:

(1) Administration
(2) Dispatching
(3) Pilot Boats
(4) Pilot Travel
(5) Pilot Training
(6) Target Pilot Compensation.

(d) Target Pilot Compensation for ratemaking purposes is based on comparability with licensed counterparts on U.S. Great Lakes Vessels, and whether the services are provided in designated or undesignated waters. Target compensation for pilots providing services in designated waters (46 CFR 401.405) should be comparable to masters on U.S. Great Lakes vessels, and target compensation for pilots providing services in undesignated waters (46 CFR 401.410) should be comparable to first mates on U.S. Great Lakes vessels.

(e) The number of pilots used for ratemaking purposes is based on pilot workload standards of 1,000 hours per pilot per season in designated waters, and 1,800 hours per pilot per season in undesignated waters. However, these bridge time work standards are not the only factors considered in determining the number of pilots in the rate base.

(f) Estimated vessel traffic is projected by reviewing traffic trends, and obtaining the views of knowledgeable interested persons.

PARTS 405–499 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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At 45 FR 44587, July 1, 1980, the existing regulations of the Federal Preparedness Agency, set forth in 32A CFR Chapter XVIII, were redesignated and transferred to Title 46, Chapter II. For amendments affecting Title 32A, see the "List of CFR Sections Affected" appearing in the Findings Aids section of the 1979 volume. The following redesignation table shows the relationship between Title 32A regulations and the redesignated parts reflected in Title 46:

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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